

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 18011280
)
HSFC, INC.) Date Issued: September 11, 2018
)
)
)
)
_____)

OPINION

Representing the Parties:

For Appellant: Harmandeep Singh Sandu, President
For Franchise Tax Board: Gi Nam, Tax Counsel

J. ANGEJA, Administrative Law Judge: Pursuant to Revenue and Taxation Code section 19324,¹ HSFC, Inc. (appellant) appeals an action by the Franchise Tax Board (FTB or respondent) denying appellant’s claim for a \$3,200 refund for the 2009 - 2014 tax years.²

Appellant waived its right to an oral hearing and therefore the matter is being decided based on the written record.

ISSUES

1. Whether appellant has established that the late-filing penalties should be abated.
2. Whether appellant has established that the estimated tax penalties should be abated.
3. Whether appellant has established that interest should be abated.

FACTUAL FINDINGS

1. Appellant is a corporation incorporated under the laws of the State of California that registered with the Secretary of State (SOS) on August 4, 2005; for tax purposes,

¹ Unless otherwise indicated, all “Section” or “§” references are to sections of the California Revenue and Taxation Code.

² Although the claim for refund was in the amount of \$3,200, respondent asserts that appellant only paid penalties and interest totaling \$2,054.59 for the years at issue.

- appellant elected to be treated as an S corporation. On October 15, 2015, appellant filed its 2014 tax return reporting that it had no income and marked that it was dissolved.
2. On March 15, 2016, FTB received appellant's Application for Certificate of Revivor with a payment of \$6,867.67 and tax returns for 2009 – 2013. For the 2009 – 2014 tax years, appellant reported on its returns that it had no taxable income and marked that it was dissolved.
 3. On September 26, 2008, appellant's Agent for Service of Process filed form RA-100 (Resignation of Agent Upon Whom Process May Be Served) with the SOS, thereby resigning as appellant's agent for service of process as of that date.
 4. Records from the SOS provided by FTB indicate that appellant's president is an officer or shareholder in three other corporations.
 5. By letter dated March 21, 2016, FTB advised appellant that its corporation was suspended by the SOS on March 6, 2009, for failure to file a Statement of Officers. In response, appellant filed its Statement of Information with the SOS on March 29, 2016, and filed its dissolution documents on April 6, 2016. Also on that date, appellant filed a claim for refund of penalties and interest for the tax years at issue herein.
 6. In its April 6, 2016 claim for refund, appellant contends that it closed its business in June of 2008, and requested its agent to file the legal documents required to close the business. Appellant asserts that it did not know that its agent failed to dissolve the corporation, and appellant received no updates from its agent. Additionally, appellant contends that it did not properly dissolve the corporation because its president was not experienced.
 7. FTB denied the claim for refund, and this timely appeal followed.

DISCUSSION

Issue 1 - Whether appellant has established that the late-filing penalties should be abated.

An S corporation is required to file its tax return on or before the 15th day of the third month following the close of the tax year. (§ 18601(d)(1).) Section 19131 provides that a late-filing penalty shall be imposed when a taxpayer fails to file a tax return on or before its due date, unless the taxpayer establishes that the late filing was due to reasonable cause and not due to its willful neglect. (§ 19131.) The penalty is five percent of the amount of tax required to be shown

on the return for every month that the return is late, up to a maximum of 25 percent.
(§ 19131(a).)

The FTB's determination is presumed to be correct, and a taxpayer has the burden of proving error. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509, 514; *Appeal of Michael E. Myers*, 2001-SBE-001, May 31, 2001.)³ To establish reasonable cause, the taxpayer "must show that the failure to file timely returns occurred despite the exercise of ordinary business care and prudence, or that cause existed as would prompt an ordinarily intelligent and prudent businessman to have so acted under similar circumstances." (*Appeal of Howard G. and Mary Tons*, 79-SBE-027, Jan. 9, 1979.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Aaron and Eloise Magidow*, 82-SBE-274, Nov. 17, 1982.)

Here we note that appellant was required to timely file tax returns for the appeal years (§ 18601) but failed to do so. Accordingly, FTB properly imposed the late-filing penalties, and the issue is whether appellant has established reasonable cause to relieve them.

Appellant asserts that it told its agent to dissolve the corporation, and appellant was not aware that the agent failed to do so. However, appellant has provided no evidence to corroborate its assertion that it instructed its agent to dissolve the corporation. Additionally, the record reflects that appellant's agent for service of process resigned prior to the tax years in question, and appellant has not identified any agent whom it allegedly instructed to dissolve the corporation. More importantly, even if appellant had instructed an agent to dissolve the corporation, we would expect a reasonably prudent person (e.g., including appellant whose president is an officer or shareholder in three other corporations) to verify with the agent or the SOS that the corporation had in fact been dissolved, but here there is no evidence that appellant did so at any time during the six appeal years at issue. Accordingly, appellant has not established reasonable cause to relieve the late-filing penalties.

³ Pursuant to the Office of Tax Appeals Rules for Tax Appeals, California Code of Regulations, title 18, section 30501 subdivision (d)(3), precedential opinions of the State Board of Equalization (BOE) which were adopted prior to January 1, 2018, may be cited as precedential authority to the Office of Tax Appeals unless a panel removes, in whole or in part, the precedential status of the opinion as part of a written opinion that the panel issues pursuant to this section. BOE opinions are generally available for viewing on the BOE's website: <http://www.boe.ca.gov/legal/legalopcont.htm#boeopinion>.

Issue 2 – Whether appellant has established that the estimated tax penalties should be abated.

A corporation subject to the franchise tax imposed by Part 11 of the Revenue and Taxation Code must file a declaration of estimated tax and pay the estimated tax for each year. (§§ 19023, 19025.) If the amount of estimated tax does not exceed the minimum franchise tax (\$800), the entire amount of the estimated tax shall be due and payable on or before the fifteenth day of the fourth month of the taxable year. (§ 19025(a).) A corporation that underpays its estimated tax is penalized by an addition to tax equal to a specified rate of interest applied to the amount of the underpayment. (§§ 19142, 19144.) A penalty for the underpayment of estimated tax is properly imposed where the taxpayer's installment payments are less than the amounts due at the end of the installment periods. (*Appeal of Bechtel, Inc.*, 78-SBE-052, July 26, 1978.) There is nothing in the law that allows a taxpayer relief from the penalty on a showing of reasonable cause or extenuating circumstances. (*Appeal of Weaver Equipment Co.*, 80-SBE-048, May 21, 1980.)

Here, the estimated tax penalty is presumed to be correct and cannot be abated for reasonable cause. Appellant does not argue that respondent incorrectly applied the penalty, and it has made no showing that the estimated tax penalty was incorrectly calculated. We therefore conclude that appellant is liable for the estimated tax penalty as determined by respondent.

Issue 3 – Whether appellant has established that interest should be abated.

Interest is not a penalty. It is compensation for the taxpayer's use of the money, and the law requires respondent to collect interest on past-due taxes. There is no reasonable cause exception to the imposition of interest. (§ 19101(a); *Appeal of Amy M. Yamachi*, 77-SBE-095, June 28, 1977; *Appeal of Audrey C. Jaegle*, 76-SBE-070, June 22, 1976.) As relevant here, respondent can abate interest when the interest is attributable to unreasonable error or delay by an FTB officer or employee while performing a ministerial or managerial act in his or her official capacity. (§ 19104(a).)

Here, appellant does not allege or prove unreasonable error or delay by an FTB officer or employee. It argues that there is reasonable cause to abate interest, but that is not a basis for abatement. We conclude appellant is not entitled to interest abatement.

HOLDINGS

1. Appellant has failed to establish that the late-filing penalties should be abated.
2. Appellant has failed to establish that the estimated tax penalties should be abated.
3. Appellant has failed to establish that interest should be abated.

DISPOSITION

We sustain respondent's denial of the claim for refund.

DocuSigned by:
Jeff Angeja
0D390BC3CCB14A9...
Jeffrey G. Angeja
Administrative Law Judge

We concur:

DocuSigned by:
Sara A Hosey
6D3FE4A0CA514E7...
Sara A. Hosey
Administrative Law Judge

DocuSigned by:
Tommy Leung
0C90542BE88D4E7...
Tommy Leung
Administrative Law Judge