

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No. 18042597
)	
DOUGLAS AHERN NURSE)	Date Issued: October 31, 2018
PRACTITIONER PC)	
)	
)	

OPINION

Representing the Parties:

For Appellant:	Douglas Ahern
For Respondent:	Ricky Martorana, Graduate Student Assistant

J. ANGEJA, Administrative Law Judge: Pursuant to California Revenue and Taxation Code section 19324,¹ the Douglas Ahern Nurse Practitioner PC (appellant) appeals an action by the Franchise Tax Board (FTB or respondent) in denying appellant’s claim for refund of \$216 for the 2015 tax year.

ISSUE

Whether appellant has established reasonable cause to abate the S-corporation late-filing penalty.

FACTUAL FINDINGS

1. Appellant is a domestic corporation and a calendar-year taxpayer that registered with the California Secretary of State on December 14, 2015. Appellant had neither business activity, nor income, during the 2015 tax year. Appellant did not file a timely tax return for the 2015 tax year.
2. However, FTB determined that as a domestic corporation, appellant was required to file a return for the 2015 tax year. On October 20, 2017, FTB issued to appellant a request for

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

a tax return. FTB received appellant's 2015 tax return on December 5, 2017, and FTB imposed an S-corporation late-filing penalty in the amount of \$216 because appellant filed its 2015 tax return more than 20 months after the March 15, 2016 due date.

3. Appellant paid the penalty on February 15, 2018, and contemporaneously filed a claim for refund. In its claim, and on appeal, appellant asserts that reasonable cause exists to abate the penalty because it held a good-faith belief that that it did not have a filing requirement and appellant did not conduct any business operations in California during the 17 days that it was in operation during for the 2015 tax year, and appellant did not understand California tax law.
4. On March 26, 2018, FTB denied the claim for refund, and this timely appeal followed.

DISCUSSION

For tax year 2015, appellant was required to file a tax return on or before the 15th day of the third month following the close of its taxable year. (§ 18601.)² Appellant neither filed by March 15, 2016, nor did it file within the automatic six-month extension allowed by section 18604. Instead, appellant filed its return on December 5, 2017, more than 20 months after the original due date. California imposes a per-shareholder, late-filing penalty on an S-corporation for the failure to file a return on or before the due date, unless it is shown that the late filing is due to reasonable cause. (§ 19172.5(a).) Since appellant filed a late tax return, FTB properly imposed a per-shareholder, late-filing penalty of \$216.³

To establish reasonable cause to abate the late-filing penalty, a taxpayer must show that the failure to timely file a tax return occurred despite the exercise of ordinary business care and prudence, or that an ordinarily intelligent and prudent businessperson would have acted in the same manner under similar circumstances. (*Appeal of Howard G. and Mary Tons*, 79-SBE-027, Jan. 9, 1979.)⁴ In addition, ignorance of the law is not an excuse for failing to file a timely return. (*Appeal of Diebold, Inc.*, 83-SBE-002, Jan. 3, 1983.)

²Corporations with a taxable year of 15 days or less that conduct no business in California do not have a filing requirement. (§ 23114(a).)

³The late-filing penalty is calculated as follows: number of months the S-corporation's return is late (not exceeding 12 months) x \$18 x number of persons who were shareholders in the S-corporation during any part of the taxable year. (§ 19172.5(b).) Thus, for 2015: 12 months x \$18 x 1 shareholder = \$216.

⁴Published decisions of the Board of Equalization, designated by "SBE" in the citation, are available on that Board's website at: <<http://www.boe.ca.gov/legal/legalopcont.htm>>.


Appellant argues that reasonable cause exists to abate the penalty because appellant did not conduct any business operations in California during the 17 days that it was in operation during 2015, and did not understand California tax law. However, since appellant incorporated in California on December 14, 2015, it was required to file a return for the 17-day period that constitutes its 2015 tax year. (§ 18601(a).) There is no exception in section 18601 for corporations with no income or expenses for the taxable year. Further, it appears that appellant may have believed that it did not have a filing requirement, or may have misunderstood the law regarding its filing obligation, but a taxpayer's ignorance of the law is not an excuse for failing to timely file a return. (*Appeal of Diebold, Inc., supra.*) In addition, appellant has not provided any evidence of any action it took, prior to the due date of its tax return, to determine whether it had a filing requirement. Appellant has not shown that it exercised ordinary business care and prudence to determine whether it had a California filing obligation. Without any evidence showing any steps appellant took, appellant has not met its burden of proving reasonable cause to abate the penalty. (*Appeal of Diebold, Inc., supra.*) Accordingly, we find that appellant has failed to establish reasonable cause exists to abate the late-filing penalty.

HOLDING

Appellant has failed to establish reasonable cause to abate the S-corporation late-filing penalty.


DISPOSITION

Respondent's action in denying appellant's claim for refund is sustained.


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Jeffrey G. Angeja
Administrative Law Judge

We concur:

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Teresa A. Stanley
Administrative Law Judge

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Nguyen Dang
Administrative Law Judge