

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18042667
)
APPEAL OF LOGIC2LAYOUT, INC.) Date Issued: March 5, 2019
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)
_____)

OPINION

Representing the Parties:

For Appellant: Ratendra Pandey, President

For Franchise Tax Board (FTB): Nancy Parker, Tax Counsel IV

G. THOMPSON, Administrative Law Judge: Pursuant to California Revenue and Taxation Code (R&TC) section 19324, appellant Logic2Layout, Inc. appeals an action by FTB denying its claim for refund of \$126 for the 2016 tax year.

Appellant did not request an oral hearing. Accordingly, we are deciding this appeal based on the written record and without an oral hearing.

ISSUE

Has appellant shown legal grounds to abate the late-filing penalty?

FACTUAL FINDINGS

1. On February 22, 2016, appellant, a California corporation, was incorporated. Appellant elected to be taxed as an S corporation.
2. On September 20, 2017, appellant filed its California S Corporation Franchise or Income Tax Return (Form 100S) for its tax year ending on December 31, 2016.
3. Appellant had one shareholder during 2016.
4. FTB determined that appellant’s tax return was filed seven months late and imposed a late-filing penalty of \$126 under R&TC section 19172.5.
5. Appellant filed a refund claim requesting a refund of the penalty.

6. FTB denied the refund claim, and appellant filed this timely appeal.

DISCUSSION

Appellant's tax return was due on or before the 15th day of the third month following the close of its taxable year (i.e., on March 15, 2017). (§ 18601(d)(1).) Appellant did not file its tax return by this deadline. Pursuant to R&TC section 18604, FTB provides an automatic six-month extension, to September 15, 2017, for the filing of the return. However, appellant also did not file its tax return by this extended deadline.

California imposes a per-shareholder late-filing penalty on S corporations 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. (R&TC, § 19172.5(a).) The penalty is imposed for each month (or fraction thereof) that the tax return is late and is calculated for each month by multiplying the number of shareholders by \$18. Here, FTB correctly calculated the penalty as \$126 (i.e., \$18 per month x 7 months x 1 shareholder).

To establish reasonable cause for failing to file a timely return, a taxpayer must show that the failure occurred "despite the exercise of ordinary business care and prudence, or that such cause existed as would prompt an ordinary intelligent and prudent businessman to have so acted under similar circumstances." (*Appeal of Tons*, 79-SBE-027, Jan. 9, 1979.)¹ It is settled law that ignorance of the law does not excuse a taxpayer's failure to comply with statutory requirements. (*Appeal of Diebold, Inc.*, 83-SBE-002, Jan. 3, 1983 (*Diebold*).

On appeal, appellant argues that it entered into a new business with a small budget and had some confusion regarding the filing deadlines. Appellant's President, Mr. Pandey, states that, as a matter of principle, he timely files and pays all his taxes. He also notes that the business earned no income in the tax year at issue.

It appears that appellant's failure to timely file was inadvertent and that it did not realize the applicable tax filing deadline. However, to establish reasonable cause, a taxpayer must establish that that it exercised ordinary business care and prudence, which requires familiarizing oneself with the deadlines for filing a tax return. (*Diebold, supra.*) As noted above, ignorance of the law does not constitute reasonable cause. (*Id.*) R&TC section 18601 does not provide an exception from the filing requirement for corporations that had no income. Based on the

¹ Precedential opinions of the Board of Equalization, which are designated by "SBE," may be found on its website: <<http://www.boe.ca.gov/legal/legalopcont.htm>>.

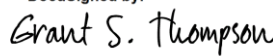
applicable precedents and statutes, we have no basis to reverse FTB's action denying appellant's refund claim.

HOLDING

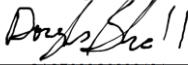
Appellant has not shown legal grounds to abate the late-filing penalty.


DISPOSITION

FTB's action denying appellant's claim for refund for the 2016 tax year is sustained.

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Grant S. Thompson
Administrative Law Judge

We concur:

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Douglas Bramhall
Administrative Law Judge

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Linda C. Cheng
Administrative Law Judge