

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 18010807
)
ROAD READY REGISTRATION, INC.) Date Issued: April 2, 2018
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)
_____)

OPINION

Representing the Parties:

For Appellant: Sandra Tucceri, Enrolled Agent

For Franchise Tax Board: Eric R. Brown, Tax Counsel III

Office of Tax Appeals Tax Counsel: Josh Lambert, Tax Counsel

M. GEARY, Administrative Law Judge: Pursuant to Revenue and Taxation Code section 19324,¹ Road Ready Registration, Inc. (appellant) appeals an action by the Franchise Tax Board (FTB or respondent) denying appellant’s claim for a \$4,062.81 refund for the 2014 tax year.²

ISSUES

- 1. Is appellant liable for the late-filing penalty?
- 2. Is appellant entitled to abatement of the estimated tax penalty?
- 3. Is appellant entitled to interest abatement?

FACTUAL FINDINGS

- 1. On or about October 14, 2015, appellant filed with the Internal Revenue Service (IRS) an “Application to Adopt, Change, or Retain a Tax Year,” requesting approval to change its tax reporting period from a fiscal year ending July 31 to a calendar year beginning ending December 31, effective August 1, 2014.³

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

² Although the claim for refund was in the amount \$4,062.81, respondent asserts that appellant only paid penalties and interest totaling \$4,177.15 for 2014 (consisting of a \$3,702.75 late-filing penalty, a \$109.56 underpayment of estimated tax penalty, and \$364.84 of interest).

³ We do not have evidence that the IRS approved the application. Because the parties have not raised this issue, we will not address it here.

2. On October 26, 2015, appellant filed a late California Corporation Franchise or Income Tax Return (Form 100) for the reporting period August 1, 2014, through December 31, 2014.⁴ On the return, appellant reported net income of \$167,547, tax of \$14,811, and no payments. Appellant self-assessed a \$109 penalty for underpayment of estimated tax and paid \$14,920 with its return.
3. On December 8, 2015, respondent sent a Notice of Balance Due to appellant, indicating that respondent had imposed a late-filing penalty of \$3,702.75, an estimated tax penalty of \$109.56, and interest.⁵
4. On December 24, 2015, appellant paid the balance due.
5. On August 9, 2016, appellant submitted a \$4,062.81 claim for refund. In the claim, appellant asked respondent to abate the penalties and interest on the ground that the late filing was due to reasonable cause and not willful neglect.
6. By letter dated October 20, 2016, respondent denied appellant's claim for refund, stating that appellant had not established a basis for relief of the penalties or abatement of interest.
7. This timely appeal followed.

DISCUSSION

Issue 1 - Is appellant liable for the late-filing penalty?

A 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.) 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*,

⁴ The signatures on the return bear the same date as the signatures on the application to change appellant's filing basis.

⁵ The estimated tax penalty was in addition to the one self-reported by appellant.

2001-SBE-001, May 31, 2001.)⁶ 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.) In the absence of credible, competent, and relevant evidence showing error in an assessment, the proposed assessment must be upheld. (*Appeal of Oscar D. and Agatha E. Seltzer*, 80-SBE-154, Nov. 18, 1980.)

Appellant states that its former accountant essentially “abandoned” appellant when it declined to represent appellant after July 31, 2014, after the accountant went through a downsizing. Appellant also states its former accountant failed to give appellant its estimated tax payment vouchers, and that the accountant appellant subsequently hired to assume responsibility had inadequate time to prepare and file the returns, which was due, in part, to appellant’s changing its tax-reporting period. Appellant argues that these circumstances together constitute reasonable cause to abate the penalties and interest.

It may be reasonable for a taxpayer to rely on the advice of an accountant or an attorney when that accountant or attorney advises a taxpayer as to a matter of tax law. However, one does not need to be a tax expert to know that tax returns have fixed filing dates and taxes must be paid when due; and a taxpayer’s reliance on an accountant or attorney cannot be a substitute for compliance with an unambiguous statute. (*United States v. Boyle* (1985) 469 U.S. 241, 251-252.) Each taxpayer has a personal, non-delegable obligation to file a tax return by the due date. (*Appeal of Thomas K. and Gail G. Boehme*, 85-SBE-134, Nov. 6, 1985; *Appeal of Roger D. and Mary Miller*, 86-SBE-057, Mar. 4, 1986.)

Appellant had a non-delegable duty to file its tax returns and pay the taxes due by the due date. The circumstances of the relationship between appellant and its accountant do not change that. Appellant does not state when it first learned that its accountant would no longer represent

⁶ Pursuant to the Office of Tax Appeals Rules for Tax Appeals, California Code of Regulations, tit. 18, § 30501(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>.

its interests or when it first retained a replacement. However, regardless of what appellant's accountants did or failed to do, the non-delegable duty to timely file returns and pay taxes due always rested squarely on appellant. We cannot determine from the evidence what appellant did to fulfill its duty. We note there were several critical dates for tax purposes during the months following July 31, 2014.⁷ Yet, the earliest evidence we have of a relationship between appellant and a new accountant are the application and the return signed on October 14, 2015, over 15 months after the alleged abandonment and over seven months after appellant failed to timely file its return. Based on the evidence, we find that appellant has not established that its failure to timely file was due to reasonable cause. Consequently, we conclude that appellant is liable for the late-filing penalty.

Issue 2 – Is appellant entitled to abatement of the estimated tax penalty?

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 Company*, 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.

⁷Appellant's return for the tax year ending July 31, 2014 (TYE 7/14) was due on October 15, 2014, and an estimated tax payment for the TYE 7/15 was due by November 15, 2014.

Issue 3 – Is appellant entitled to interest abatement?

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).)

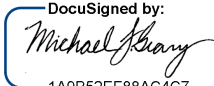
Here, appellant does not allege or prove unreasonable error or delay by an FTB officer or employee. It argues that there is reasonable cause to abate interest, but that is not a basis for abatement. We conclude appellant is not entitled to interest abatement.

HOLDINGS

1. Appellant is liable for the late-filing penalty as it has not established that its failure to timely file its return was due to reasonable cause.
2. Appellant is liable for the estimated tax penalty.
3. Appellant is not entitled to interest abatement.

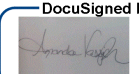
DISPOSITION

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


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 Michael F. Geary
 Administrative Law Judge

We concur:

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 Amanda Vassigh
 Administrative Law Judge

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 Tommy Leung
 Administrative Law Judge