

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18010980
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SANTA CRUZ IMPORTS, INC.) Date Issued: March 27, 2018
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OPINION

Representing the Parties:

For Appellant: Michael J. Kammerer, CPA
For Respondent: Andrew Amara, Tax Counsel

KWEE, Administrative Law Judge: Pursuant to Revenue and Taxation Code section 19324,¹ Santa Cruz Imports, Inc. (appellant) appeals an action by the Franchise Tax Board (FTB or respondent) in denying appellant’s claim for refund in the amount of \$4,791.68 for the 2015 tax year. This matter is being decided based on the written record because appellant waived its right to an oral hearing.

ISSUE

Did appellant establish that its failure to timely pay the amount shown as tax on its tax return for the 2015 tax year was due to reasonable cause and not due to willful neglect?

FACTUAL FINDINGS

1. Appellant, a California corporation, timely filed its 2015 California Corporation Franchise or Income Tax Return (tax return, FTB Form 100) with FTB on September 14, 2016, reporting net income for California tax purposes of \$686,610, after applying a net operating loss deduction of \$541,597.
2. As relevant to this appeal, appellant’s primary source of income for the 2015 tax year consisted of capital gains reported on Schedule D of its tax return as follows: (1) short-

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

term capital gain from property described as “NET SHORT TERM CAPITA [SIC]”, reportedly purchased on January 1, 2015, and sold on December 31, 2015, for a gross sales price of \$723,420, and \$0 in reported basis; and (2) long-term capital gain from property described as “LONG TERM CAPITAL GAI [SIC]”, reportedly purchased on January 1, 2014, and sold on December 31, 2015, for a gross sales price of \$870,932, and \$0 in reported basis.²

3. Appellant reported total tax of \$60,696 on its 2015 tax return. After applying its \$800 estimated tax payment,³ appellant reported unpaid tax due of \$59,896.⁴ On September 15, 2016, appellant made an untimely payment of \$59,896 towards its 2015 tax liability, which was due six months earlier on March 15, 2016.⁵
4. With the exception of interest and penalties, FTB accepted appellant’s tax return as filed and issued a Notice of Balance Due dated October 21, 2016, notifying appellant of a \$4,791.68 late payment penalty,⁶ plus accrued interest, due by November 7, 2016.
5. Appellant paid the \$4,791.68 late payment penalty plus accrued interest on December 7, 2016.
6. By letter dated December 13, 2016, appellant filed a claim for refund with FTB. In it, appellant contended that it was unable to timely pay or estimate its tax liability because, due to a complex accounting issue in “fund of fund” investments, it did not receive any indication of the estimated gain by the due date for paying its tax liability. Appellant also stated that it did not receive a final Schedule K-1 until September 2016.⁷ By Notice of

² Appellant also reported dividend, interest, rent, and royalty income, and claimed ordinary and necessary business expense deductions including compensation of officers, taxes and interest paid, depreciation, and other unspecified deductions.

³ Appellant made the estimated tax payment the prior year, on April 15, 2015.

⁴ Appellant left line 44 of its Form 100, for reporting interest and penalties, blank.

⁵ For the 2015 calendar tax year, the due date for a C Corporation to file a return was March 15, 2015. (§ 18601 (2015).) Assembly Bill 1775 (Stats. 2016, Ch. 348) subsequently modified the due date specified in Section 18601 beginning with returns filed for the 2016 tax year, which is not at issue in this appeal.

⁶ This amount represents 5 percent of the unpaid tax of \$59,896, plus a monthly penalty of .5 percent of \$59,896, for the six months that this amount remained unpaid (i.e., March 15, 2016, through September 15, 2016).

⁷ Appellant also disputed the \$929.41 in accrued interest in its appeal with FTB. This amount is no longer at issue, however, and we do not discuss it further.

Action (NOA) dated March 13, 2017, FTB denied appellant's claim for refund on the basis that appellant did not show reasonable cause for failing to timely pay the tax.

7. By letter dated April 26, 2017, appellant timely filed the instant appeal from FTB's March 13, 2017, NOA denying appellant's claim for refund. In addition to the contention raised in its December 13, 2016, claim for refund, appellant also contends that it has an exemplary filing history and that its 2015 income was significantly higher than in any prior year, unexpected, and impossible to anticipate. In support, appellant attached as exhibits: (1) FTB's March 13, 2017, NOA denying appellant's claim for refund; (2) FTB's Past Due Notice dated December 7, 2016, notifying appellant of the unpaid late payment penalty and accrued interest balance; (3) FTB's October 21, 2016, Notice of Balance Due; and (4) FTB Publication 1087, titled "Denial of a Claim for Refund Information."

DISCUSSION

California imposes a late payment penalty for a taxpayer's failure to pay the amount of tax shown on a return before the due date, unless it is established that the late payment was due to reasonable cause and not due to willful neglect. (§ 19132(a)(1).) The late payment penalty is the sum of two figures that may not exceed 25 percent of the unpaid tax. (§ 19132(a)(2).) The first addend is five percent of the tax that remained unpaid as of the due date.

(§ 19132(a)(2)(A).) The second addend is .5 percent of the unpaid tax balance per month for each month, or portion of a month, that the tax remains unpaid after the due date, not to exceed 40 months. (§ 19132(a)(2)(B).) For these purposes, the due date for payment of tax is determined without regard to any extension of time to file the return. (§ 19001.)

A tax determination is generally presumed correct and, therefore, a taxpayer has the burden of establishing reasonable cause. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509, 514; *Appeal of Michael E. Myers*, 2001-SBE-001, May 31, 2001 [late-filing penalty]; *Appeal of M.B. and G.M. Scott*, 82-SBE-249, Oct. 14, 1982 [late payment penalty].) As a general matter, in order for a taxpayer to establish that a failure to act was due to reasonable cause, the taxpayer must show that the failure 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 Stephen C. Bieneman*, 82-SBE-148, July 26, 1982; *Appeal of Howard G. and Mary Tons*, 1979-SBE-027, Jan. 9, 1979.)

Respondent properly assessed a late payment penalty equal to five percent of the unpaid tax amount, plus an additional .5 percent of the unpaid tax for the six months the amount remained unpaid, because appellant paid its tax for the 2015 calendar year six months late. It is a well-established rule in California that delay due to difficulty in accumulating documents or other information necessary to complete a return generally will not constitute reasonable cause for purposes of abating the late payment penalty.⁸ Furthermore, delays in computing the tax liability caused by the complexity of the Revenue and Taxation Code do not constitute reasonable cause.⁹ Similarly, with respect to late filings, the United States Supreme Court has concluded that each taxpayer has a personal, non-delegable obligation to file a tax return by the due date and, as such, a taxpayer's reliance on a third party to timely file a federal return does not constitute reasonable cause for a late filing. (*United States v. Boyle* (1985) 469 U.S. 241, 252.) The logic for such basic legal concepts stems from the fact that no special skill set or talent is required to know that there are unambiguous due dates for filing returns and paying taxes, and to comply with those requirements one must timely obtain and maintain the requisite records. (See *United States v. Boyle, supra*, at p. 251.) Therefore, we conclude that the standard of reasonable business care and prudence imposes on taxpayers a general obligation to take reasonable measures to obtain and maintain the requisite documentation or other information necessary to timely calculate and pay their own tax liability by the due date. (See Cal. Code Regs., tit. 18, § 19032(a)(5).)

Nevertheless, we are cognizant that under certain circumstances a taxpayer, notwithstanding the exercise of reasonable business care and prudence, might be unable to timely make an accurate calculation and payment of its tax liability due to circumstances entirely beyond its control. We do not, however, find that appellant has established those circumstances in the instant appeal. The facts we find most relevant to our conclusion are as follows. First, appellant provided no documentation to show what efforts it took to obtain the

⁸ See *Appeal of J. B. and P. R. Campbell*, 85-SBE-112, Oct. 9, 1985 [delay in obtaining records]; *Appeal of Elixir Industries*, 83-SBE-248, Dec. 14, 1983 [late discovery of additional income]; *Appeal of M.B. and G.M. Scott*, 82-SBE-249, Oct. 14, 1982 [lack of necessary information]; (*Appeal of Incom International, Inc.*, 82-SBE-053, Mar. 31, 1982) [difficulty accumulating necessary information]; and *Appeal of Avco Financial Services, Inc.*, 79-SBE-084, May 9, 1979 [difficulty estimating tax due resulting in late payment penalty].

⁹ See *Appeal of Philip C. and Anne Berolzheimer*, 86-SBE-172, Nov. 19, 1986 [complexity of the tax law]; *Appeal of Roger W. Sleight*, 83-SBE-244, Oct. 26, 1983 [complexity of the tax law]; and *Appeal of Cerwin-Vega International*, 78-SBE-070, Aug. 15, 1978 [accounting issue].

information necessary to calculate its capital gain income from the third party who allegedly maintained such information. Second, although appellant contends it did not receive a Schedule K-1 concerning its capital gain income until September, 2016, appellant has not shown that it was somehow precluded from obtaining a reasonably accurate estimate of its capital gain income from the entity involved before that date.¹⁰ Third, appellant's contention that part of the delay was due to an unspecified, but allegedly complex accounting issue in fund of fund investments does not, by itself, constitute reasonable cause (see footnote 9, *supra*). Fourth, appellant estimated its tax liability for the year as \$800, which turned out to be just 1.3% of appellant's actual tax liability of \$60,696. Under the facts and circumstances of this case, we find that appellant did not establish that its failure to timely pay the tax was the result of reasonable cause and not willful neglect.

Although appellant also asserts that it had an exemplary filing history, we have no authority to waive the late payment penalty based on appellant's prior good filing or payment history. The law provides that the late payment penalty shall apply unless it is shown that the failure to timely pay was due to reasonable cause and not willful neglect, and here, appellant's prior filing or payment history had no impact on its ability to timely pay the 2015 tax liability. (§ 19132(a)(1).) In conclusion, we find that appellant did not establish reasonable cause for failing to timely pay its tax for the 2015 tax year.

HOLDING

Appellant failed to establish that its failure to timely pay the tax for the 2015 tax year was due to reasonable cause and not due to willful neglect.

¹⁰ A Schedule K-1 is generally used to report a partner's share of income, deductions, and credits. We note that even a limited partner generally has the right to inspect and copy information regarding the financial condition of the partnership. (See Corp. Code, § 15903.04.)


DISPOSITION

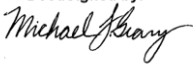
Respondent's action in denying appellant's claim for refund is sustained in full.

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Andrew J. Kwee
Administrative Law Judge

We concur:

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Tommy Leung
Administrative Law Judge

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Michael F. Geary
Administrative Law Judge