

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18053144
BEST PLUMBING SERVICES, INC.) Date Issued: July 9, 2019
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OPINION

Representing the Parties:

For Appellant: James K. Eckenrode, E.A.

For Respondent: Nancy Parker, Tax Counsel IV

For Office of Tax Appeals: Neha Garner, Tax Counsel III

J. ANGEJA, Administrative Law Judge: Pursuant to California Revenue and Taxation Code (R&TC) section 19324, Best Plumbing Services, Inc. (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$712.04¹ for the 2016 tax year.

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 shown reasonable cause for its failure to file a timely return for the 2016 tax year.
2. Whether appellant has demonstrated reasonable cause to abate the penalty for underpayment of estimated tax imposed for the 2016 tax year.

FACTUAL FINDINGS

1. Appellant, an S corporation, filed an untimely California S corporation tax return (Form 100S) for the 2016 tax year, on September 29, 2017, reporting a net income of \$116,433

¹ This amount consists of a \$436.50 late filing penalty, a \$252.00 S corporation late filing penalty, a \$23.54 estimated tax penalty, plus interest.

and an S corporation tax of \$1,746.² The return also indicated that there were not more than two shareholders that year. In addition, a Form 5806 was included with the return, in which appellant self-assessed an underpayment of estimated tax penalty of \$24. Respondent received a payment of \$1,770 (i.e., tax of \$1,746 + penalty of \$24) on October 9, 2017.

2. Respondent imposed a late filing penalty of \$436.50 pursuant to R&TC section 19131 and the per-shareholder late filing penalty of \$252.00 pursuant to R&TC section 19172.5. In addition, because timely estimated installment payments were not received, respondent calculated the underpayment of estimated tax penalty, adjusting the amount self-assessed by appellant from \$24.00 to a total penalty of \$23.54. Respondent received a payment of \$742.67 on December 15, 2017, which satisfied the 2016 tax year balance.
3. On January 16, 2018, respondent received appellant's claim for refund, requesting abatement of the penalties for reasonable cause. On February 27, 2018, respondent denied appellant's claim for refund. This timely appeal followed.

DISCUSSION

Issue 1 - Whether appellant has shown reasonable cause for its failure to file timely returns for the 2016 tax year.

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; *Appeal of Myers* (2001-SBE-001) 2001 WL 1187160.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.)

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 taxable year. (R&TC, § 18601.) R&TC section 18604(a) provides for an extension of time to file a return, not to exceed seven months after the due date for filing a return. R&TC section 18604 further provides that an extension to file may be granted in the "manner and form as the Franchise Tax Board may determine." Pursuant to FTB Notice No. 92-11, the extension of the time to file is conditioned upon filing the return within the automatic extension period. If the return is not filed by the extended due date, then no extension

² Pursuant to R&TC sections 23802, subdivision (b)(1), and 23151, a corporation with an S-corporation election that is formed or doing business in California shall pay the greater of the minimum franchise tax of \$800 or a measured tax of 1.5 percent on the income of the S corporation.

exists. (FTB Notice No. 92-11, p. 1.) The payment of tax is due on the original due date of the return without regard to the extension. (R&TC, § 18604(b).)

R&TC 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 was not due to willful neglect. The late filing penalty is specified as five percent of the tax due for each month that a valid tax return is not filed after it is due (determined without regard to any extension of time for filing the return), not to exceed 25 percent of the tax. (R&TC, § 19131(a).)

Here, appellant failed to file its return by the due date of March 15, 2017. Appellant did not file its return until September 29, 2017, seven months late. Therefore, the late filing penalty was properly calculated at \$436.50 (i.e., total tax of \$1,746.00 x 25 percent).

R&TC section 19172.5(a), provides that, for returns required to be filed after January 1, 2011, if any S corporation fails to file a return within the time prescribed (determined with regard to any extension of time for filing) or files a return that fails to show the information required under R&TC section 18601, then the S corporation shall be liable for a per-shareholder penalty unless that failure is due to reasonable cause. The amount of the penalty is calculated as \$18 multiplied by the number of persons who were shareholders in the S corporation during any part of the taxable year multiplied by the number of months the return is late, up to 12 months. (R&TC, § 19172.5(b).)

Here, as stated above, appellant filed its return on September 29, 2017, past the March 15, 2017 due date of the return and the September 15, 2017 automatic extended due date of the return. Since appellant's return was not filed by the extended due date, no extension existed and the return was filed seven months late. Accordingly, respondent properly calculated the S corporation late filing penalty of \$252 (i.e., \$18 x 2 shareholders x 7 months) for the 2016 tax year.

When FTB imposes a late filing penalty, the law presumes that the penalty was imposed correctly. (*Todd v. McColgan, supra.*) The burden is on the taxpayer to establish reasonable cause for the untimely filing. (*Appeal of Scott* (82-SBE-249) 1982 WL 11906.) To establish reasonable cause for failing to timely file, a taxpayer must show that the failure to timely file the return occurred despite the exercise of ordinary business care and prudence, or that cause existed

as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of Tons* (79-SBE-027) 1979 WL 4068.)

As applied to situations involving illness or other personal difficulty, the standard of reasonable cause requires the taxpayer to present competent and credible proof that he or she was continuously prevented from filing a timely return. (*Appeal of Halaburka* (85-SBE-025) 1985 WL 15809.) Reasonable cause is not established when personal difficulties, including issues surrounding the dissolution of a marriage, simply cause a taxpayer to sacrifice the timeliness of one aspect of its affairs to pursue other aspects. (*Appeal of Bryant* (83-SBE-180) 2019 WL 1187161; *Appeal of Orr* (68-SBE-010) 1968 WL 1640.)

Here, appellant asserts that it was unable to file a return because of an employee's accounting mistakes and due to the personal circumstances related to marital issues of one of its shareholders. Although appellant's shareholder may have faced personal difficulties, appellant has not proven that the decision of its shareholder to prioritize other aspects of his professional and personal life was anything more than the sacrifice of one responsibility in favor of another. Moreover, appellant has not provided any evidence to establish that its alleged difficulties continuously prevented it from timely filing despite the exercise of ordinary business care and prudence. Indeed, we note that despite these alleged circumstances, appellant earned gross income of \$739,587 during the 2016 tax year, and it appears that the shareholder himself was able to perform services during the 2016 calendar year and received income from appellant.³ While we are sympathetic to appellant's circumstances, we conclude that appellant has failed to establish reasonable cause for failing to timely file.

Issue 2 - Whether appellant has demonstrated reasonable cause to abate the penalty for underpayment of estimated tax imposed for the 2016 tax year.

An S corporation that is qualified to do business in California is subject to the franchise or income tax and must file a declaration of estimated tax and pay estimated tax each year. (R&TC, §§ 19023, 19025.) R&TC section 19025 requires taxpayers to pay at least the entire amount of the minimum franchise tax as an estimated tax payment on or before the 15th day of the fourth month of the taxable year. R&TC section 19142 provides that, when there is an underpayment of the estimated tax, an amount shall be added to the tax as a penalty equal to a

³ FTB's records reflect a Schedule K-1 for ordinary business income in the amount of \$58,624 and wage compensation of an officer in the amount of \$33,747 for the 2016 tax year.

specified rate of interest. The amount of the underpayment is equal to the excess of the amount of the required installment over the amount of the installment (if any) paid before the due date for the installment. (R&TC, § 19144(a).)

The imposition of the underpayment of estimated tax penalty is mandatory. (*Appeal of McEwen* (85-SBE-091) 1985 WL 15898.) The Board of Equalization, the predecessor to the Office of Tax Appeals, has held that relief from the penalty for the underpayment of the estimated tax is not available upon a showing of “extenuating circumstances, “reasonable cause”, or “a lack of willful neglect.” (*Appeal of Weaver Equipment Company* (80-SBE-048) 1980 WL 4976.)


Here, appellant was required to pay the minimum tax of \$800 for the 2016 tax year by April 15, 2016. However, appellant did not pay the estimated tax amount as required. Accordingly, respondent properly imposed the estimated tax penalty for tax year 2016 of \$23.54, and appellant is not entitled to abatement of the estimated tax penalty.

HOLDINGS


1. Appellant has failed to show reasonable cause for its failure to file timely returns for the 2016 tax year.
2. Appellant has failed to show reasonable cause to abate the penalty for underpayment of estimated tax imposed for the 2016 tax year.

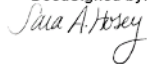
DISPOSITION

FTB's denial of appellant's claim for refund is sustained.

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Jeffrey G. Angeja
Administrative Law Judge

We concur:

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John O. Johnson
Administrative Law Judge

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Sara A. Hosey
Administrative Law Judge