

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18083607
PACLAND-PORTLAND, INC.) Date Issued: November 6, 2019
)
)
)
)

OPINION

Representing the Parties:

For Appellant: Ronald A. Chatterton, CPA

For Respondent: Nancy Parker, Tax Counsel IV

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

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, appellant Pacland-Portland, Inc., appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$594 for the 2016 tax year.

Appellant waived its right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUE

Whether appellant established reasonable cause for the late filing of its tax return.

FACTUAL FINDINGS

1. On February 13, 2018, appellant, an S corporation, filed an untimely 2016 California income tax return, that was due on March 15, 2017. The return reported an overpayment and a refund.
2. A tax preparation software activity report indicates a federal extension was requested on March 15, 2017. The report indicates no further activity until February 13, 2018, when appellant filed California, federal, and Oregon returns. The report does not indicate any earlier attempts to file a California return for 2016.

3. FTB imposed a late-filing penalty of \$594, pursuant to R&TC section 19172.5. FTB reduced appellant's refund by the amount of the penalty.
4. Appellant filed a claim for refund of the penalty, which FTB denied. This timely appeal followed.

DISCUSSION

For the 2016 tax year, an S corporation is required to file its tax return on or before the 15th day of the third month following the close of its taxable year. (R&TC, § 18601.) R&TC section 18604(a) provides that FTB may grant a reasonable extension of time to file a return “in the manner and form as the Franchise Tax Board may determine.” Pursuant to FTB Notice 2016-04, the extended filing due date for S corporations is the 15th day of the ninth month following the close of the taxable year. If the return is not filed by the extended due date, then no extension exists.

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), then the S corporation shall be liable for a penalty unless that failure is due to reasonable cause. In this case, appellant was required to file its 2016 return by March 15, 2017, or the extended date of September 15, 2017. However, appellant filed its return on February 13, 2018, 11 months after the original March 15, 2017 due date. Accordingly, no extension exists.

A taxpayer has the burden of establishing reasonable cause for failing to timely file the return. (*Appeal of Tons* (79-SBE-027) 1979 WL 4068.) Reasonable cause requires a showing that the taxpayer acted as an ordinarily intelligent and prudent businessperson would have acted under similar circumstances. (*Id.*) In other words, the taxpayer must show that the failure to file the return occurred despite the exercise of ordinary business care and prudence. (*Id.*)

Appellant contends that its tax preparer mistakenly thought the return was timely filed due to a glitch in its tax preparation software program. Appellant's reliance on its tax preparer to file a timely return does not constitute reasonable cause. (*United States v. Boyle* (1985) 469 U.S. 241.) An ordinarily intelligent and prudent businessperson would have viewed the e-file history and acknowledgment records to confirm whether the return had been timely transmitted and

accepted. (*Appeal of Quality Tax & Financial Services, Inc.*, 2018-OTA-130P.)¹ Therefore, the alleged software glitch does not establish reasonable cause.

Appellant asserts that the tax return was completed before the deadline. However, the fact that the return may have been prepared prior to the due date does not, in itself, prove the timely filing of the return. (*Appeal of La Salle Hotel Co.* (66-SBE-071) 1966 WL 1412.) Appellant also notes that it timely paid its tax. However, the penalty at issue is not a late-payment penalty, but a late-filing penalty. Appellant argues that it obviously did not intend to file the return late because it provided Schedules K-1 to its shareholders before the due date. That is true, but the return was still filed late. Each taxpayer has a personal, non-delegable obligation to file a tax return by the due date. (*United States v. Boyle, supra*, 469 U.S. 241.) Furthermore, appellant's contentions do not explain why it did not file its return until 11 months after the due date. In sum, appellant's arguments do not establish reasonable cause for the failure to timely file its return.

¹ Precedential decision of the Office of Tax Appeals (OTA) may be found on OTA's website at: <<https://ota.ca.gov/opinions>>.

HOLDING

Appellant has not established reasonable cause for the late filing of its tax return.

DISPOSITION

FTB’s action is sustained.

DocuSigned by:
Josh Lambert
B90E40A720E3440...
Josh Lambert
Administrative Law Judge

We concur:

DocuSigned by:
Neil Robinson
842E234444DB4A6...
Neil Robinson
Administrative Law Judge

DocuSigned by:
Daniel Cho
7B28A07A7E0A43D...
Daniel K. Cho
Administrative Law Judge