

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 19044614  
**H. HALWANI** )  
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**OPINION**

Representing the Parties:

For Appellant: Terry R. Fussell, CPA

For Respondent: Eric A. Yadao, Tax Counsel III

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, H. Halwani (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$9,206.50<sup>1</sup> for the 2017 taxable year.

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

**ISSUES**

1. Did appellant establish reasonable cause to abate the late-filing penalty?
2. Did appellant establish that the underpayment of estimated tax penalty should be abated?

**FACTUAL FINDINGS**

1. On October 28, 2018, appellant late-filed a 2017 California income tax return and paid the reported tax liability, including a self-assessed underpayment of estimated tax penalty of \$148.

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<sup>1</sup>The claim for refund consists of a \$9,058.50 late-filing penalty and a self-assessed \$148 penalty for underpayment of estimated tax.

2. FTB accepted the return and issued a Notice of State Income Tax Due, which included penalties for filing late and underpayment of estimated taxes, plus interest.<sup>2</sup>
3. Appellant paid the balance due and filed a claim for refund based on reasonable cause to abate the penalties. Appellant asserted that he did not learn of pass-through income reported to him on a Schedule K-1 from a partnership (Carla Ridge, LLC) until October 2018. Carla Ridge, LLC filed its California tax return on September 17, 2018.

### DISCUSSION

#### Issue 1 - Did appellant establish reasonable cause to abate the late-filing penalty?

R&TC section 19131 imposes a late-filing penalty on a taxpayer who fails to file a return by either the due date or the extended due date, unless a taxpayer demonstrates that the failure was due to reasonable cause and not willful neglect. The late-filing penalty may be abated when the taxpayer shows that reasonable cause exists to support an abatement of the penalty. (*Appeal of Xie*, 2018-OTA-0276P.) To prevail on this basis, appellant “must show that the failure to file timely returns occurred despite the exercise of ordinary business care and prudence, or that such cause existed as would prompt an [ordinarily] intelligent and prudent business[person] to have so acted under similar circumstances.” (*Appeal of Tons* (79-SBE-027) 1979 WL 4068.)

Appellant asserts that there was reasonable cause for paying late because of confusion over pass-through income from Carla Ridge, LLC, which resulted in appellant not realizing that he had additional income until October 2018. Appellant further explains that income from Carla Ridge, LLC was “inadvertently not included” in 2016 income, which created additional income due for taxable year 2017. Although appellant believes the penalty was assessed because he paid his tax liability late, the record reflects that the penalty was imposed for *filing* late. Appellant offers no explanation of how his confusion caused him to file his return late. Moreover, appellant fails to explain how the unexpected increase in his projected tax liability caused him to file his return late. On appeal, FTB sent appellant’s representative an email requesting that appellant “elaborate and provide details on the ‘confusion,’ ” including documentation showing “1) what transpired factually and chronologically, 2) how the appellant learned of the error, 3) when the error came to light, 4) whose error was it, and 5) how/when the taxpayer was

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<sup>2</sup> Appellant’s representative contacted FTB about the balance due and was incorrectly informed that the penalties were assessed due to late payment of tax.

notified by whom?” The appeal record does not show that appellant provided further details or documentation that would help to evaluate a claim of reasonable cause for filing the return late.

Appellant has not established how the confusion or unknown information would have caused appellant to file a late return. We believe an ordinarily prudent businessperson would have filed the return by the due date and amended it later, if necessary, based on updated information. Moreover, because Carla Ridge, LLC filed its own return by the extended due date, appellant should have received his Schedule K-1 in time to file his own return by the extended deadline for individuals to file (October 15, 2018). Based on the foregoing, appellant has not established reasonable cause to abate the late-filing penalty.

Issue 2 - Did appellant establish that the underpayment of estimated tax penalty should be abated?

R&TC section 19136 conforms to Internal Revenue Code (IRC) section 6654 and imposes an estimated tax penalty for failure to timely make estimated tax payments. The penalty is similar to an interest charge in that it is calculated by applying the applicable interest rate to the underpayment of estimated tax. (*Appeal of Saltzman*, 2019-OTA-070P.) No provision in the R&TC or IRC allows the estimated tax penalty to be abated based on a finding of reasonable cause. (*Ibid.*) The estimated tax penalty is mandatory unless the taxpayer establishes that a statutory exception applies. (*Appeal of Johnson*, 2018-OTA-119P.) The taxing agency may waive the estimated tax penalty if it determines that by reason of casualty, disaster, or other unusual circumstances the imposition of the estimated tax penalty would be against equity and good conscience. (IRC, § 6654(e)(3)(A).) Although waiver of the penalty does not contemplate a showing of reasonable cause, it is at least a minimum requirement and we have not found that appellant has even established this. (See *Carlson v. U.S.* (7th Cir. 1997) 126 F.3d 915, 921.)

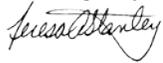
Here, the \$148 penalty was self-assessed by appellant, as reported on the return, which FTB accepted. Appellant’s estimated taxes were underpaid, and therefore, the penalty was correctly imposed. Nothing in appellant’s claim for refund alleges or shows that there was a casualty, disaster or unusual circumstances showing that imposition of the penalty is against equity and good conscience and should be abated.

HOLDINGS

1. Appellant has not established reasonable cause to abate the late-filing penalty.
2. Appellant has not established that the underpayment of estimated tax penalty should be abated.

DISPOSITION

FTB’s action is sustained.

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 Teresa A. Stanley  
 Administrative Law Judge

We concur:

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 Andrew J. Kwee  
 Administrative Law Judge

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 Nguyen Dang  
 Administrative Law Judge

Date Issued: 3/19/2020