

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

BAINS D., LLC

) OTA Case No. 18124132

) Date Issued: December 11, 2019

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OPINION

Representing the Parties:

For Appellant:

Darshan Singh, President

For Respondent:

Diane M. Deatherage, Program Specialist, III

E. S. EWING, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Bains D., LLC (appellant) appeals an action by the respondent Franchise Tax Board (FTB) denying appellant's claim for refund of \$555 for the 2016 through 2018 tax years.

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

ISSUES

1. Has appellant demonstrated reasonable cause to abate the late-filing penalty for tax year 2016?
2. Has appellant demonstrated reasonable cause to abate the late payment penalty for tax years 2017 and 2018?
3. Is appellant entitled to abatement of the estimated Limited Liability Company (LLC) fee penalty for tax year 2017?

FACTUAL FINDINGS

1. Appellant was organized in California with the California Secretary of State (SOS) on June 11, 2015.

2. On May 14, 2018, appellant filed Form 568 - Limited Liability Company Return of Income, reporting total income of \$478,900, a total annual tax and LLC fee of \$1,700 (\$800 annual tax plus \$900 LLC fee) for tax year 2016.
3. On May 14, 2018, appellant filed Form 568 - Limited Liability Company Return of Income, reporting total income of \$496,549, a total annual tax and LLC fee of \$1,700 (\$800 annual tax plus \$900 LLC fee) for tax year 2017.
4. On May 14, 2018, appellant filed Form 568 - Limited Liability Company Return of Income (short-period return), for the period January 1, 2018 through May 15, 2018, reporting total income of \$82,180, and the LLC annual tax of \$800 for tax year 2018. This return was identified by appellant as a final return.
5. For the 2016 tax year, because appellant filed its return over two years late, FTB imposed a late-filing penalty of \$225 pursuant to R&TC section 19131, plus applicable interest. Appellant paid \$1,700 on July 3, 2017, resulting in a balance of \$285.48. On September 15, 2018, appellant paid the balance due of \$285.48.
6. For the 2017 tax year, because appellant had made no timely payments of the tax nor the LLC fee, FTB imposed a late payment penalty of \$155.06 under R&TC section 19132, a 10 percent estimated LLC fee penalty of \$90 under R&TC section 17942(d)(2), plus applicable interest. The resulting balance due of tax, LLC fee, penalties, and interest was \$2,032.16, which appellant paid on September 15, 2018.
7. For the 2018 short-period return, because appellant had made no timely payment of the tax, FTB imposed a late payment penalty of \$60 under R&TC section 19132, plus applicable interest, which appellant paid on September 15, 2018.
8. On May 14, 2018, the California SOS canceled appellant's status as an LLC due to its dissolution.
9. On October 15, 2018, Appellant timely filed a claim for refund with the FTB in the amount of \$555, requesting abatement of the penalties assessed for the 2016 through 2018 tax years. FTB denied the claim for refund and appellant timely filed this appeal.

DISCUSSION

Issue 1 - Has appellant demonstrated reasonable cause to abate the late-filing penalty for tax year 2016?

R&TC section 19131 imposes a penalty for the failure to file a return on or before the due date, unless it is shown that the late filing is due to reasonable cause and not due to willful neglect. (R&TC, § 19131(a).)¹ The standard of reasonable cause requires the taxpayer to establish that the failure to timely act occurred despite the exercise of ordinary business care and prudence. (*United States v. Boyle* (1985) 469 U.S. 241, 246.)² The burden is on the taxpayer to establish reasonable cause by a preponderance of the evidence.³ (Cal. Code Regs., tit. 18, § 30219(a), (c).)

Appellant asserts that its tax preparer made an error in not responding to inquiries about its tax filing obligations and that its tax preparer was at fault for the late filing. Notwithstanding these assertions, each taxpayer has a personal, non-delegable obligation to file the tax return by the due date, to respond to a notice and demand from the FTB that a return be filed, and to furnish information requested by the FTB. (*Appeal of Thomas K. and Gail G. Boehme* (85-SBE-134) 1979 WL 4224; *Appeal of Roger D. and Mary Miller* (86-SBE-057) 1986 WL 22789.) A taxpayer's assumption and reliance on an agent, such as an accountant or a tax attorney, to file the return by the due date does not meet the requisite standard of care (i.e., a showing of ordinary business care and prudence). (*United States v. Boyle* (1985), *supra*, 469 U.S. at p. 251; *Appeal of Harry J. Moren* (2019-OTA-176P).) Absent such a showing, appellant cannot avoid the resulting penalty by placing responsibility on his tax return preparer. (*Metra Chem Corp. v. Commissioner* (1987) 88 T.C. 654, 662.). Accordingly, we find no reasonable cause to abate the late payment penalty because appellant's sole rationale for abatement is to place responsibility on its tax return preparer for failing to timely file the returns.

¹ There is no evidence in the record showing willful neglect or an allegation of willful neglect. Thus, the balance of this analysis shall focus only on whether appellant meets the standard for proving reasonable cause.

² Because the relevant language of R&TC section 19131 pertaining to the reasonable cause exception is patterned after Internal Revenue Code section 6651, the federal courts' interpretation of the "reasonable cause" standard is persuasive authority in determining the proper construction of these California statutes. (*Andrews v. Franchise Tax Bd.* (1969) 275 Cal.App.2d 653, 658; *Rhin v. Franchise Tax Bd.* (1955) 131 Cal.App.2d 356, 360.)

³ A preponderance of evidence means that the taxpayer must establish by documentation or other evidence that the circumstances it asserts are more likely than not to be correct. (*Concrete Pipe and Products of California, Inc. v. Construction Laborers Pension Trust for Southern California* (1993) 508 U.S. 602, 622.)

Issue 2 - Has appellant demonstrated reasonable cause to abate the late payment penalty for tax years 2017 and 2018?

R&TC section 19132 imposes a late payment penalty when a taxpayer fails to pay the amount shown as due on the return by the date prescribed for the payment of the tax. Generally, the date prescribed for the payment of the tax is the due date of the return (without regard to extensions of time for filing). (R&TC, § 19001.) As discussed above, for the 2017 tax year, because appellant had made no timely payments of the tax or LLC fee, FTB imposed a late payment penalty under R&TC section 19132 in the amount of \$155.06, a 10 percent estimated LLC fee penalty of \$90 under R&TC section 17942(d)(2), plus applicable interest. The resulting balance due of tax, LLC fee, penalties, and interest was \$2,032.16, which appellant paid on September 15, 2018. For the 2018 short-period return, because appellant had made no timely payment of the tax, FTB imposed a late payment penalty under R&TC section 19132 of \$60 plus applicable interest. On September 15, 2018, FTB received a payment in the amount of \$876.40, for the taxes, interest and penalties. Thus, the payments for both the 2017 and 2018 tax years were late and the FTB properly imposed the late payment penalties.

However, the late payment penalty may be abated if the taxpayer shows that the failure to make a timely payment of tax was due to reasonable cause and was not due to willful neglect. (R&TC, § 19132(a)(1).) To establish reasonable cause for the late payment of tax, a taxpayer must show that the failure to make a timely payment of the proper amount of tax occurred despite the exercise of ordinary business care and prudence. (*Appeal of Curry* (86-SBE-048) 1986 WL 22783.) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Scott* (83-SBE094) 1983 WL 15480.) An asserted lack of documentation or difficulty in calculating a tax liability does not, by itself, constitute reasonable cause for a late payment of tax. (*Appeal of Sleight* (83- SBE-244) 1983 WL 15615; *Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.) Accordingly, we find no reasonable cause to abate the late payment penalty because appellant's sole rationale for abatement is to place responsibility on its tax return preparer for appellant's failure to timely make the payments.

Issue 3 - Is appellant entitled to abatement of the estimated LLC fee penalty for tax year 2017?

The underpayment of estimated LLC fee penalty was asserted under R&TC section 17942(d)(2). R&TC section 17942 imposes an LLC fee based on total California source income of LLCs that are doing business in California. The LLC fee is required to be estimated and paid on or before the 15th day of the sixth month of the taxable year. (R&TC, § 17942(d)(1).) When the estimated payment of the LLC fee is less than the amount of LLC fee due for the taxable year, a penalty equal to 10 percent of the underpayment is imposed unless the fee amount that was timely estimated and paid was equal to or greater than the total amount of the LLC fee assessed for the preceding taxable year. (R&TC, § 17941(d)(2).) The statute does not provide for a reasonable cause defense to imposition of the penalty. Here, FTB assessed an underpayment of estimated LLC fee penalty because the LLC fee was required to be estimated and paid by the due date (i.e., the 15th day of the sixth month of that six-month reporting period), which it was not. Appellant raises a reasonable cause defense to imposition of the penalty by asserting that he relied on a tax professional to ascertain the payment due date.

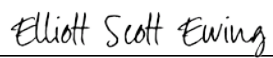
Nevertheless, the only defense to the penalty authorized by statute is the safe harbor provision which provides that the penalty will not be imposed if the estimated LLC fee payment is equal to or exceeds the LLC fee assessed in the prior tax year. (R&TC, § 17942(d)(2).) Here, appellant's payment did not exceed the LLC fee assessed for the prior taxable period. Accordingly, we find the safe harbor is inapplicable and there is no basis for abating the penalty.

HOLDINGS


1. Appellant has not demonstrated reasonable cause to abate the late-filing penalty for tax year 2016.
2. Appellant has not demonstrated reasonable cause to abate the late payment penalty for tax years 2017 and 2018.
3. Appellant is not entitled to abatement of the estimated LLC fee penalty for tax year 2017.

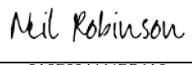
DISPOSITION

The action of the FTB is sustained.

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Elliott Scott Ewing
Administrative Law Judge

We concur:

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Andrew J. Kwee
Administrative Law Judge

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Neil Robinson
Administrative Law Judge