

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

In the Matter of the Appeal of: ) OTA Case No. 20035993  
H.C. DESIGNS, INC. )  
 )  
 )  
 )  
 )  
 )

---

**OPINION**

Representing the Parties:

For Appellant: Brenda Colburn Jemmott, CPA

For Respondent: Gi Nam, Tax Counsel

N. DANG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, H.C. Designs, Inc. (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$19,893.55 for the 2018 tax year.<sup>1</sup>

Appellant waived its right to an oral hearing, and therefore, we decide the matter based on the written record.

**ISSUE**

Whether the late-payment (R&TC, § 19132) and underpayment of estimated tax (R&TC, § 19142) penalties should be abated for reasonable cause.

**FACTUAL FINDINGS**

1. Appellant, an S corporation, was a member of JCM Partners, LLC (JCM), which is classified as a partnership for tax purposes.
2. For the 2018 tax year, appellant recognized a distributive share of capital gain of \$10,408,837 that it received from JCM, as reported on a Schedule K-1 form.
3. Appellant failed to make an estimated tax payment or pay the tax due on this capital gain by the payment deadlines.

---

<sup>1</sup>This amount consists of penalties totaling \$15,667.29 and interest of \$4,226.26. Appellant does not dispute the interest amount and therefore we do not discuss it further.

4. Consequently, FTB imposed a late-payment and underpayment of estimated tax penalty.
5. Appellant paid the amount due and filed a refund claim seeking abatement of these penalties on “reasonable cause” grounds.

### DISCUSSION

Appellant explains that its failure to make a sufficient estimated tax payment and to timely pay the tax resulting from its recognition of a \$10,408,837 pass-through capital gain was a direct result of JCM’s failure to inform appellant of this gain until after the payment deadlines had expired. Appellant further contends that it was unable to anticipate the recognition of this much income because it was significantly higher than in past years and appellant did not receive any cash distribution with respect to that income. Appellant also asks that we consider its history of timely payments and that its sole shareholder passed away on September 4, 2018.

There is no provision for abating the underpayment of estimated tax penalty based on reasonable cause. (*Appeal of Scanlon*, 2018-OTA-075P.) Therefore, we need not discuss appellant’s reasonable cause argument as applied to this penalty.<sup>2</sup>

Regarding the late-payment penalty, it shall not be imposed where the failure to pay the amount shown or required to be shown on a return by the prescribed date is due to reasonable cause and not willful neglect. (R&TC, § 19132(a).) Reasonable cause means that the failure to make a timely payment occurred despite the exercise of ordinary business care and prudence. (*Appeal of Moren*, 2019-OTA-176P.) Unsupported assertions are insufficient to establish reasonable cause to abate the penalty. (*Appeal of Scanlon*, *supra*.)

Most notable is the absence of any evidence indicating the cause of appellant’s late payment. To support its position, appellant provided Schedules K-1 issued by JCM for the 2015 through 2018 tax years. While these schedules show that the \$10,408,837 capital gain appellant recognized for the 2018 tax year was significantly greater than the pass-through gain or loss from JCM that it had recognized for any of the prior three tax years, they provide no insight as to why appellant was unable to timely pay.

Moreover, appellant’s attempt to shift responsibility to JCM for its late payment fails to consider the abundance of legal authority pertaining to the standard of reasonable cause. We have consistently held that a “lack of documentation or difficulty in calculating a tax liability

---

<sup>2</sup> There are a few limited exceptions to the penalty (see, e.g., R&TC, § 19147) but appellant does not raise any of them here.

does not, by itself, constitute reasonable cause for a late payment of tax. [¶] ... [¶] If a taxpayer asserts that [it] does not have the information necessary to make a reasonably accurate estimate of [its] tax liability, [it] must show the efforts made to acquire that information from the source that held it, and that difficulties in obtaining the necessary information led to the delay in payment.” (*Appeal of Moren, supra.*) Appellant has not demonstrated that it took any initiative to ascertain its pass-through income from JCM despite the impending payment deadline. Instead, it appears appellant was content to wait for JCM to issue a Schedule K-1 before taking the appropriate action. Appellant’s lack of inquiry in this situation means it failed to exercise ordinary business care and prudence.

Finally, there are no provisions in the law which would permit us to abate the penalties based solely on appellant’s history of timely payments or the passing of its shareholder.<sup>3</sup>

#### HOLDING

The late-payment and underpayment of estimated tax penalties should not be abated.

#### DISPOSITION

We sustain FTB’s action.

DocuSigned by:  
*Nguyen Dang*  
77AFD3E4552843B...  
Nguyen Dang  
Administrative Law Judge

We concur:

DocuSigned by:  
*Kenneth Gast*  
4283B8CD40F34BC...  
Kenneth Gast  
Administrative Law Judge

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

Date Issued: 12/9/2020

<sup>3</sup> The California Legislature has previously considered and declined to adopt bills that would allow a first-time abatement for taxpayers with a history of filing and payment compliance. (See, e.g., Assembly Bill No. 1777 (2013-2014 Reg. Sess.))