

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

In the Matter of the Appeal of: ) OTA Case No. 20056183  
**ESTATE OF V. BAKER** )  
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**OPINION**

Representing the Parties:

For Appellant: Lee M. Willard, CPA  
Adelindo O. Syas, Administrator

For Respondent: Christopher T. Tuttle, Tax Counsel III

N. DANG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, the Estate of V. Baker (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying its claim for refund of \$872.50 for the 2018 tax year.

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

**ISSUE**

Whether there is reasonable cause to abate the late-filing penalty.

**FACTUAL FINDINGS**

1. Appellant filed an untimely California Fiduciary Income Tax Return for the 2018 tax year.
2. Consequently, FTB imposed a late-filing penalty plus applicable interest.
3. Appellant paid the penalty and interest due and filed a refund claim for the penalty amount seeking reasonable cause abatement.

**DISCUSSION**

The late-filing penalty shall not apply where the failure to file a return within the prescribed deadline was due to reasonable cause and not willful neglect. (R&TC, § 19131(a).)

The standard of reasonable cause requires appellant to establish that the failure to timely file occurred despite the exercise of ordinary business care and prudence. (*Appeal of Xie*, 2018-OTA-076P.)

Appellant contends that the penalty should be abated because it had reasonable cause for its late filing. Appellant explains that initially, it intended to distribute and deduct long-term capital gains it had realized for the 2018 tax year to its beneficiaries in order to minimize the resulting tax burden.<sup>1</sup> According to appellant, this necessitated identifying all its beneficiaries and preparing Schedule K-1 forms for them before its return could be filed. However, appellant asserts that due to the large number of beneficiaries, many of which were unknown to appellant and resided in a multitude of different states and counties, appellant was unable to complete this lengthy and difficult process by the filing deadline. Upon coming to this realization, appellant asserts that it changed its position and did not distribute or deduct those capital gains, which obviated the need to identify its beneficiaries and prepare Schedule K-1 forms.

The record, however, is entirely devoid of any documentary evidence that might indicate the cause of appellant's late filing. Appellant's assertions alone are insufficient to establish reasonable cause to abate the penalty.<sup>2</sup> (*Appeal of Scanlon*, 2018-OTA-075P.) Moreover, while the distribution of income and the issuance of Schedule K-1 forms to appellant's beneficiaries might have impacted the ability of those persons to timely file, we fail to see how this would prevent appellant itself from timely filing. "Taxpayers have an obligation to file timely returns with the best available information, and to then subsequently file an amended return, if necessary. [Citation.] Difficulty in obtaining information does not constitute reasonable cause for the late filing of a return." (*Appeal of Xie, supra.*) This required appellant to file its return (as it eventually did) based on the information available to it by the filing deadline, and later amend its return to claim a distribution deduction if it so desired. Based on the foregoing, we conclude that penalty abatement is not warranted.

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<sup>1</sup> Generally, the income of an estate is taxable to the estate. (R&TC, § 17742(a).) However, to avoid double taxation, estates are permitted to deduct certain amounts distributed (or required to be distributed currently), paid or credited for such taxable year, which are then includable in the gross income of the estate's beneficiaries. (R&TC, § 17731(a) [incorporating by reference Subchapter J of Chapter 1 of Subtitle A of the Internal Revenue Code (IRC) relating to estates, trusts, beneficiaries, and decedents, except as otherwise provided]; IRC, § 661 [relating to distribution deductions]; IRC, § 662 [relating to the inclusion of amounts in gross income of beneficiaries of estates and trusts].)

<sup>2</sup> Appellant also failed to provide any support for its assertion that these capital gains were deductible or that the identification of all its beneficiaries was a necessary condition to claiming a distribution deduction.

HOLDING

There is no reasonable cause to abate the late-filing penalty.

DISPOSITION

We sustain FTB’s action.

DocuSigned by:  
*Nguyen Dang*  
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Nguyen Dang  
Administrative Law Judge

We concur:

DocuSigned by:  
*Teresa A. Stanley*  
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Teresa A. Stanley  
Administrative Law Judge

DocuSigned by:  
*Sheriene Anne Ridenour*  
67E043D83EF547C...  
Sheriene Anne Ridenour  
Administrative Law Judge

Date Issued: 11/23/2020