

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 20066257  
**TRI COUNTY TRANSPORT, INC.** )  
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**OPINION**

Representing the Parties:

For Appellant: Mary E. Humphrey, CPA

For Respondent: Leoangelo C. Cristobal, Tax Counsel

M.GEARY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Tri County Transport, Inc. (appellant) appeals an action by respondent Franchise Tax Board denying appellant’s claim for refund of \$2,675.77 for the tax year ending June 30, 2018 (TYE 6/30/18).

This matter is being decided based on the written record because appellant waived its right to an oral hearing.

**ISSUE**

Is appellant entitled to abatement and refund of the estimated tax penalty imposed by respondent for TYE 6/30/18?

**FACTUAL FINDINGS**

1. Appellant made no estimated tax payments for TYE 6/30/18, but it made a timely extension payment.
2. Appellant filed its Corporate Franchise or Income Tax Return (Form 100) for TYE 6/30/18 by the extended due date.
3. On May 22, 2019, respondent sent to appellant a Notice of Balance Due, which indicated respondent had imposed an estimated tax penalty of \$2,675.77 and a balance due of \$2,502.77 after a credit for appellant’s extension payment.

4. By letter dated June 24, 2019, appellant asked respondent to waive the estimated tax penalty on the grounds that appellant was unable to determine its tax liability until shortly before it made its extension payment.
5. By notice dated July 10, 2019, respondent denied the waiver request.
6. On or about July 22, 2019, appellant paid the entire amount due.
7. Appellant filed its timely request for refund dated January 31, 2020, using FTB Form 2924 (Reasonable Cause – Business Entity Claim for Refund).
8. By notice dated June 12, 2020, respondent denied the claim for refund. This timely appeal followed.

### DISCUSSION

Corporations who are required to pay California franchise tax pursuant to Part 11 of the R&TC must make estimated tax payments. (R&TC, §§ 19023, 19025.) Corporations that fail to make timely estimated income tax payments are subject to an estimated tax penalty. (R&TC, §§ 19142, 19144.) A penalty for the underpayment of estimated tax is properly imposed where the taxpayer's installment payments are less than the amounts due at the end of the installment periods. (*Appeal of Bechtel, Inc.* (78-SBE-052) 1978 WL 3525.) The estimated tax penalty cannot be abated on the grounds that the failure to pay was due to reasonable cause or extenuating circumstances.<sup>1</sup> (*Appeal of Weaver Equipment Company* (80-SBE-048) 1980 WL 4976.)

Here, appellant does not dispute that it paid no estimated tax for TYE 6/30/18, and it does not dispute the calculation or imposition of the estimated tax penalty. It argues only that its failure to pay estimated tax was due to extenuating circumstances, those being that it was incorporated on August 1, 2017, TYE 6/30/18 was its first year as part of a controlled group, and the resulting accounting complexities made it difficult to estimate its income and pay its estimated taxes. As stated above, an estimated tax penalty cannot be abated on the grounds that the failure to pay was due to reasonable cause or extenuating circumstances. Consequently, we cannot grant the requested relief.

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<sup>1</sup> The only exceptions to imposition of the penalty are specifically noted in R&TC section 19142(b), but appellant does not allege, and the evidence does not show, that any of those apply to the facts before us.

HOLDING

Appellant is not entitled to abatement and refund of the estimated tax penalty imposed by respondent for TYE 6/30/18.

DISPOSITION

Respondent’s action is sustained.

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*Michael F. Geary*  
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Michael F. Geary  
Administrative Law Judge

We concur:

DocuSigned by:  
*Natasha Ralston*  
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Natasha Ralston  
Administrative Law Judge

DocuSigned by:  
*Kenneth Gast*  
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Kenneth Gast  
Administrative Law Judge

Date Issued: 4/2/2021