

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 20096639  
**LET’S RIDE CORPORATION** )  
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**OPINION**

Representing the Parties:

For Appellant: Thomas Jenkins, Representative

For Respondent: Joel M. Smith, Tax Counsel III

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Let’s Ride Corporation (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$5,967.05 for the 2019 tax year.<sup>1</sup>

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

**ISSUES**

1. Whether appellant has shown reasonable cause for failing to timely pay tax.
2. Whether appellant is entitled to abatement of interest.

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<sup>1</sup> Appellant filed a claim for refund in the amount of \$5,967.05, which includes the following: tax of \$800; a late-payment penalty of \$3,775.04; and interest of \$1,392.01. On appeal, appellant has not raised any contentions regarding the \$800 tax payment. As such we find that it is not at issue and will not discuss it further. Appellant’s claim for refund indicates that the claimed amount includes money paid upon imposition of the late-payment penalty, and interest that accrued on appellant’s untimely paid tax liability. By letter dated June 8, 2020, FTB denied appellant’s claim for refund in the amount of \$3,779.04. Although FTB’s denial did not include appellant’s payment of accrued interest, FTB did state that there is no reasonable cause exception for the abatement of interest. FTB also did not refund the interest amounts paid by appellant. On appeal appellant continues to claim a refund for the interest amounts. Therefore, we consider appellant’s claim for refund on the amounts paid with respect to the late-payment penalty, and applicable interest.

### FACTUAL FINDINGS

1. On September 13, 2019, appellant, an S corporation, timely filed a 2018 California S Corporation Income Tax Return (Form 100S), within the extension period, reporting total tax of \$57,224. Appellant reduced its total tax by \$12,757 for claimed estimated payments, and \$1,043 for a prior year's overpayment, and reported tax due of \$43,424. Appellant untimely remitted payment of \$43,424 on September 24, 2019.
2. FTB issued a Return Information Notice on February 14, 2020, informing appellant of an error on the return. FTB reduced appellant's claimed estimated payments by \$800, from \$12,757 to \$11,957. The Return Information Notice reflected the unpaid tax of \$800, FTB's imposition of a late-payment penalty of \$3,775.04<sup>2</sup>, and accrued interest of \$1,392.01. In total, the Return Information Notice reflected a balance due of \$5,967.05 (\$800 tax + \$3,775.04 penalty + \$1,392.01 interest), which appellant paid on March 2, 2020.
3. Appellant filed a claim for refund based on reasonable cause, which FTB denied. This timely appeal followed.

### DISCUSSION

#### Issue 1: Whether appellant has shown reasonable cause for failing to timely pay tax.

R&TC section 19132 provides that a late-payment penalty is imposed when a taxpayer fails to pay the amount shown as due on the return on or before the due date of the return. 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.) Here, FTB properly imposed the late-payment penalty because payment was due on March 15, 2019, and appellant did not satisfy its 2018 tax liability until March 2, 2020.

The late-payment penalty will be abated, however, 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).) To establish reasonable cause for the late payment of tax, the taxpayer must show that the failure to make a timely payment of the proper amount of tax occurred

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<sup>2</sup> There is a \$4 difference between the penalty amount reflected in the Return Information Notice and the penalty amount reflected in FTB's denial of appellant's claim for refund. This difference is de minimis and has no effect on the outcome of this appeal.

despite the exercise of ordinary business care and prudence. (*Appeal of Moren*, 2019-OTA-176P.) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Triple Crown Baseball*, 2019-OTA-025P.) 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 Moren*, *supra*.)

On appeal, appellant asserts that the late-payment penalty should be abated. Citing R&TC section 19147, appellant asserts that the penalty does not apply because it made estimated tax payments equal to or greater than its prior year's total tax liability. Appellant also asserts that reasonable cause exists because it lacked the documents to timely calculate and pay the tax liability. As an explanation, appellant asserts that it held a membership interest in Let's Roll LLC (Let's Roll) in 2018. Appellant asserts that Let's Roll held a membership interest in Sola Franchise LLC (Sola), which it sold during 2018. Appellant asserts that because of the sale, neither Let's Roll, nor Sola, issued necessary Schedule K-1s<sup>3</sup> until after appellant's tax was due.

Regarding appellant's estimated tax payments, R&TC section 19147 provides relief from the estimated tax penalty under certain conditions. (See R&TC, §§ 19142, 19144, 19147.) However, FTB did not impose an estimated tax penalty on appellant. Instead, FTB imposed a penalty for the late payment of tax under R&TC section 19132. As such, the estimated tax penalty relief provisions of R&TC section 19147 do not apply in this case.

With respect to whether appellant could calculate and pay the tax liability, we reiterate that a 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 Moren*, *supra*.) A taxpayer must establish that it could not have acquired the information necessary to make an estimate of the tax liability. (*Ibid*.) An assertion that records were difficult to obtain without any substantiation of efforts made to retrieve those records or otherwise showing that they were unobtainable is not sufficient to show reasonable cause. (*Ibid*.)

Appellant asserts that it did not receive necessary Schedule K-1s until after the tax was due. However, appellant has not provided those documents or any evidence showing when it received the documents. As such, there is no way for us to verify whether appellant received the

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<sup>3</sup> Schedule K-1 (Partners Share of Income, Deductions, Credits, etc.) is a federal tax schedule generated as part of Form 1065 (U.S. Return of Partnership Income).

necessary Schedule K-1s after the tax due date. Appellant also has not established through documentation any steps that it took to discern its tax liability. We believe an ordinarily intelligent businessperson under similar circumstances would have proactively taken such steps to reasonably ensure timely payment of tax. Therefore, we find that appellant has not shown reasonable cause for failing to timely pay its taxes.

While the foregoing is dispositive, we note that appellant filed its return on September 13, 2019, but did not make payment until September 24, 2019 (11 days later). The question of whether there is reasonable cause for a late payment does not end once reasonable cause is found to exist at the time of the due date for payment. The inquiry continues until actual payment is remitted. (*Appeal of Moren, supra.*) Appellant was able to ascertain its tax liability at least by September 13, 2019 (the filing date). Nevertheless, appellant did not make a payment on that date. On appeal, appellant did not provide any explanation for its failure to make payment until 11 days after it filed its return. Thus, even if reasonable cause existed for appellant's failure to make a timely payment of the tax on the due date, appellant has not established that reasonable cause existed through the time that the tax was paid.

Issue 2: Whether appellant is entitled to abatement of interest.

Taxes are due and payable as of the due date of the taxpayer's return without regard to any extension. (R&TC, § 19001.) If tax is not paid by the due date, or if FTB assesses additional tax and that assessment becomes due and payable, the taxpayer is charged interest on the resulting balance due, compounded daily. (R&TC, § 19101.) Interest is not a penalty but is merely compensation for a taxpayer's use of the money. (*Appeal of GEF Operating, Inc., 2020-OTA-057P.*)


Appellant makes the same reasonable cause arguments in support of the request for relief of interest. However, there is no reasonable cause exception to the imposition of interest. (*Appeal of GEF Operating, Inc., supra.*) Consequently, we conclude that appellant is not entitled to abatement and refund of interest.

HOLDINGS


1. Appellant has not shown reasonable cause for failing to timely pay tax.
2. Appellant is not entitled to abatement of interest.


DISPOSITION

FTB’s denial of appellant’s claim for refund is sustained.

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 Keith T. Long  
 Administrative Law Judge

We concur:

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 Teresa A. Stanley  
 Administrative Law Judge

DocuSigned by:  
  
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 Sheriene Anne Ridenour  
 Administrative Law Judge

Date Issued: 7/14/2021