

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
1 STOP POOL PROS #5, INC.

) OTA Case No. 21057872
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OPINION

Representing the Parties:

For Appellant:

Brian A. Bentson, CPA

For Respondent:

Sarah J. Fassett, Tax Counsel
Cynthia Kent, Tax Counsel IV

H. LE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, 1 Stop Pool Pros #5, Inc. (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$1,198.25,¹ plus applicable interest, for the 2019 tax year.

Office of Tax Appeals Administrative Law Judges Huy “Mike” Le, Natasha Ralston, and Andrew Wong held an electronic oral hearing for this matter on March 30, 2022. At the conclusion of the hearing, the record was closed, and this matter was submitted for an opinion.

ISSUE

Whether appellant has established reasonable cause to abate the late-payment penalty for the 2019 tax year.

FACTUAL FINDINGS

1. Appellant timely filed its 2019 California tax return, reporting an amount due of \$23,965.

¹ The amount claimed on appeal is \$1,198.25; however, the correct amount at issue for the late-payment penalty consists of both the underpayment penalty of \$1,198.25 and the monthly penalty of \$239.65.

2. Appellant untimely remitted payment on August 24, 2020.²
3. Respondent assessed a late-payment penalty and issued appellant a Corporation Past Due Notice.
4. Subsequently, appellant paid the outstanding liability and filed a claim for refund, which respondent denied. This timely appeal followed.
5. On appeal, appellant submitted a document titled “Filing Instructions,” which listed a due date of October 15, 2020. The instruction document states, “[a] check in the amount of \$24,821 should be made payable to [respondent] . . . ,” but the instruction document provided no clear date on when appellant should make payment.

DISCUSSION

R&TC section 19001 provides that the personal income tax “shall be paid at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).” R&TC section 19132 provides that a late-payment penalty shall be imposed when a taxpayer fails to pay the amount shown as due on the return on or before the due date of the return.³ The late-payment penalty may be abated if a taxpayer shows that the failure to make a timely payment of tax was due to reasonable cause and not due to willful neglect.⁴ (R&TC, § 19132(a).) To establish reasonable cause, a taxpayer must show that his or her failure to make a timely payment of the proper amount of tax occurred despite the exercise of ordinary business care and prudence, and unsupported assertions are not sufficient to satisfy a taxpayer’s burden of proof. (*Appeal of Scanlon*, 2018-OTA-075P.)

While good faith reliance on professional advice may provide a basis for a reasonable cause defense, it is not absolute. (*Appeal of Summit Hosting LLC*, 2021-OTA-216P.)⁵ To

² R&TC section 18572, which incorporates Internal Revenue Code section 7508A, gives respondent the authority to postpone time-sensitive acts. The original filing and payment deadline for the 2019 tax year was postponed from April 15, 2020, to July 15, 2020 due to the COVID-19 pandemic. (See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2020-3-state-postpones-tax-deadlines-until-july-15-due-to-the-covid-19-pandemic.html>.)

³ Appellant does not dispute the imposition of the penalty.

⁴ There are no allegations of willful neglect in this appeal.

⁵ Although this case cites to *U.S. v. Boyle* (1985) 469 U.S. 241, which deals with the late-filing penalty, *Boyle* also applies in the late-payment penalty context. (*Appeal of Berolzheimer* (86-SBE-172) 1986 WL 22860.)

establish that reasonable cause exists, a taxpayer must show that it reasonably relied on a tax professional for substantive tax advice and that the following conditions are met: (1) the person relied on by the taxpayer is a tax professional with competency in the subject tax law; and (2) the tax professional’s advice is based on the taxpayer’s full disclosure of relevant facts and documents. (*Ibid.*)

Here, appellant asserts that due to the complications from the COVID-19 pandemic, its CPA firm’s software issued an instruction document that incorrectly stated that the payment due date was October 15, 2020. However, the instruction document was titled “Filing Instructions” and the listed due date of October 15, 2020,⁶ appears to be the date appellant was advised to file its return. Although the instruction document also states, “[a] check in the amount of \$24,821 should be made payable to [respondent] . . . ,” the instruction document provided no clear date on when appellant should make payment.⁷ Thus, appellant did not reasonably rely on its CPA firm when it submitted its payment late. As such, we find that appellant has not established reasonable cause for its failure to make a timely payment of tax.

⁶ This date appears to represent the extension of time to file, but we note that for the 2019 tax year, the extension deadline is November 15, 2020. (FTB Notice 2019-07.)

⁷ In addition, we believe appellant cannot reasonably assume that the payment deadline can fall on the same date as the extension of time to file. Although corporations are allowed an automatic extension, with certain restrictions, the automatic extension does not extend the time for payment of tax. The full amount of tax must be paid by the original filing due date, which for the 2019 tax year is July 15, 2020. (R&TC, § 18604; FTB Notice 2019-07.)

HOLDING

Appellant has not established reasonable cause to abate the late-payment penalty for the 2019 tax year.

DISPOSITION

Respondent’s action is sustained.

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Huy “Mike” Le
Administrative Law Judge

We concur:

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Natasha Ralston
Administrative Law Judge

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Andrew Wong
Administrative Law Judge

Date Issued: 5/12/2022