

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

<p>In the Matter of the Appeal of:</p> <p>MAPLE DRIVE MANAGEMENT HOLDINGS, INC.</p> <hr/>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>OTA Case No. 20076367</p>
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OPINION

Representing the Parties:

For Appellant:	Abner Chong, Representative
For Respondent:	Gi Jung Nam, Tax Counsel

M. GEARY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Maple Drive Management Holdings, Inc. (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$221,448.06 for the 2018 tax year.¹

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

ISSUES

1. Is appellant entitled to abatement of the late-filing penalty?
2. Did respondent correctly calculate the late-filing penalty?
3. Is appellant entitled to abatement of the estimated tax penalty?

FACTUAL FINDINGS

1. Respondent received a \$1,400,000 payment from appellant on April 8, 2019.
2. On September 23, 2019, appellant filed its 2018 California S Corporation Franchise or Income Tax Return (Form 100S), reporting the \$1,400,000 payment, tax of \$784,690, a

¹ In its appeal to the Office of Tax Appeals, appellant states that it now claims a refund of \$218,092.22, from which we infer that appellant no longer requests refund of the per shareholder late-filing penalty (\$126.00) or interest paid (\$3,229.84).

- self-assessed penalty of \$16,373, and an overpayment of \$598,937.
3. On October 11, 2019, respondent refunded to appellant \$393,061.04, after deducting \$221,448.06, which consisted of an estimated tax penalty of \$21,912.72, a late-filing penalty of \$196,172.50, a per-shareholder late-filing penalty of \$126.00, and interest totaling \$3,229.84.
 4. Appellant filed a timely claim for refund of \$221,448.06.²
 5. On April 6, 2020, respondent denied appellant's claim for refund. This timely appeal followed.³

DISCUSSION

Issue 1: Is appellant entitled to abatement of the late-filing penalty?

Appellant self-identifies as an S Corporation on its 2018 Form 100S. For the tax year at issue, an S corporation was required to file its return and pay the taxes due on or before the 15th day of the third month following close of its taxable year. (R&TC, § 18601(d)(1).) Respondent is authorized to grant reasonable extensions for the filing of an S corporation's return. (R&TC, § 18604(a).) Pursuant to FTB Notice 2016-04, appellant's extended filing date was September 15, 2019.

R&TC section 19131 requires respondent to impose a penalty on a taxpayer who fails to file a timely return unless it is shown that the failure was due to reasonable cause and not due to willful neglect. When respondent imposes a penalty, it is presumed to have been correctly imposed, and the taxpayer has the burden of proving that its failure to timely file was due to reasonable cause and not due to willful neglect. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.) Reasonable cause is established by evidence showing that the taxpayer acted as any ordinarily intelligent and prudent businessperson would have acted under similar circumstances or that the failure occurred notwithstanding appellant's exercise of ordinary business care and prudence. (*Ibid.*)

Appellant's 2018 return was due no later than the extended filing date of

² The copy of appellant's Reasonable Cause Business Entity Claim for Refund that is in our written record is for \$167,400.00, but respondent's denial states that the denied claim was for \$221,448.06.

³ We are aware that on June 15, 2021, appellant filed an Amended Corporation Franchise or Income Tax Return for the 2018 tax year, which requests a refund of \$820,206, that the claim can be deemed denied, and that appellant has not yet filed an appeal with the Office of Tax Appeals (OTA). These matters do not affect our consideration of the issues presented in this appeal.

September 15, 2019. Appellant filed its return on September 23, 2019. Therefore, respondent correctly imposed the late-filing penalty. It thus becomes appellant's burden to prove that the failure to timely file its return was due to reasonable cause and not due to willful neglect.

As almost all of appellant's arguments appear to pertain to its late payment, it is difficult to determine what arguments it makes in opposition to the late-filing penalty. For example, appellant states that it cannot even estimate its California tax liability until it receives its California K-1, which usually occurs after close of the tax year, and that appellant makes the required extension payment based on the amounts stated in its California K-1. From this, we infer that appellant had the required information on or about March 15, 2019, when appellant asserts it attempted to make its extension payment. In other words, appellant appears to concede that its failure to timely file its return was not due to a lack of required information. Appellant states that its failure to timely file was not due to mere oversight, stating that "the evidence clearly demonstrates timely and affirmative steps the [t]axpayer took . . . to fulfill its duty." However, appellant has not explained what steps it took to fulfill its duty to file its return by the extended filing date. We find nothing in the record to explain why appellant filed its return late, much less evidence that shows that the late filing was due to reasonable cause and not due to willful neglect. On that basis, we find that appellant has not met its burden of proof and therefore is not entitled to abatement of the late-filing penalty. Although this finding is dispositive of this issue, we will address appellant's other arguments below.

We note that appellant spends a great deal of time and effort arguing that its admitted failure to make a timely extension payment was due to reasonable cause and not due to willful neglect. Appellant appears to believe that its late extension payment somehow affected the extended filing date. While the late payment did have a substantial impact on the amount of the late-filing penalty, as we discuss in more detail below, it did not change the extended filing date of the return, which was September 15, 2019. Appellant filed the return several days after that date, which is why respondent imposed the late-filing penalty.

Appellant refers to its "history of timely filing extended tax returns," apparently requesting relief on that basis. The IRS administers a program called "First Time Abate" under which the IRS may administratively abate late payment and late-filing penalties if a taxpayer has timely filed returns and paid taxes due for the past three years. Respondent has no such program. Appellant has cited no authority, and we are aware of none, that would allow us to grant relief on

the basis of a good filing history.

Issue 2: Did respondent correctly calculate the late-filing penalty?

The late-filing penalty is five percent of the total tax due, less timely payments and allowable credits against the tax, for each month or part thereof that passes from the return's due date (without extension) to the date the return is filed, not to exceed 25 percent of the tax. (R&TC, § 19131(a), (c).) Here, appellant filed its return more than six months after the due date (without extension). Consequently, the maximum 25 percent penalty would apply. The tax was \$784,690. It thus appears that respondent correctly calculated the \$196,172.50 penalty, assuming there were no timely payments or allowable credits. The question is whether there were any such payments or credits.

Appellant alleges that it made a timely third quarter estimated payment of \$84,320 and that it attempted to make a timely extension payment of \$1,400,000 but was prevented from doing so by circumstances that were beyond its control. Specifically, it alleges that:

- On September 30, 2018, appellant went through a reorganization involving Levine Leichtman Capital Partners, Inc. (LLCP), the implication being that appellant came into existence as a result of that reorganization.
- LLCP made a third quarter estimated tax payment of \$84,320.
- On an unstated date, appellant attempted to make a timely extension payment by the March 15, 2019, due date, but the payment “was unable to be processed.”
- On an unstated date, appellant called respondent for instructions.
- After 5:00 p.m. on Friday, March 15, 2019, respondent told appellant to wire the payment under its name and federal employer identification number.
- Appellant could not immediately attempt a bank wire, so on March 18, 2019, appellant attempted to wire the funds as instructed. The transfer was completed and the funds were withdrawn from appellant's account, but returned to appellant's account two days later.
- When appellant became aware of the failed wire transfer, it mailed a check to respondent on April 11, 2019.

Appellant appears to argue that in the event the entire penalty is not abated for reasonable cause based on the evidence showing it took every reasonable step to timely make the extension payment, it should be abated because more than sufficient funds to pay the entire liability would have been available to respondent by March 15, 2019, but for circumstances beyond appellant's control. Although appellant does not appear to argue that the alleged \$84,320 payment should also be taken into consideration when calculating the late-filing penalty, we will address that argument also, out of an abundance of caution.

Respondent states that there is no evidence in our record, and it has no evidence in its records, to show that appellant made an \$84,320 estimated tax payment. Respondent notes that its records, which do not show that appellant was required to pay electronically at the time the taxes were due, also do not refer to any of the communications that appellant alleges occurred between appellant and respondent around March 15, 2019. Furthermore, respondent argues that the \$1,400,000 extension payment was not timely and therefore cannot be deducted from the tax amount before applying the 25 percent penalty. Respondent states that, while appellant's argument that its failure to timely pay the taxes was due to reasonable cause and not due to willful neglect might be relevant to a late-payment penalty imposed under section 19132, respondent did not impose that penalty here, and appellant's alleged inability to make the timely payment has no bearing on the calculation of the late-filing penalty prescribed by R&TC section 19131(c).

Although the result may seem somewhat incongruous, R&TC section 19131(c) states that when calculating the late-filing penalty only timely paid tax is deducted from the tax due before applying the penalty factor. Appellant's extension payment was not timely, and the plain language of the statute does not allow us to reduce the tax before calculating the penalty. Even when respondent imposes late-payment and late-filing penalties and the taxpayer is able to show that its failure to timely pay the tax was due to reasonable cause and not due to willful neglect, the late-payment penalty would be abated, but the payment would still be late, and the statute would require that the late-filing penalty (totaling 25 percent in this instance) be calculated on the entire tax due without deduction of the late payment.⁴ Consequently, we find that respondent correctly calculated the late-filing penalty.

⁴ We are not suggesting that appellant has shown that its failure to timely pay was due to reasonable cause and not due to willful neglect.

If appellant made a timely \$84,320 estimated tax payment on September 17, 2018, appellant would be entitled to deduct that amount from the tax shown on its return before calculating the penalty. However, we have no evidence that shows appellant made such a payment or that the payment was made for appellant. Appellant provided no bank statement, cancelled check, proof of electronic transfer, copy of the estimated tax voucher, or any other evidence. On the other hand, we have evidence that no such payment was made for appellant's account: appellant states that it did not come into existence until September 30, 2018, 13 days after the alleged payment; appellant's claim for refund did not include that amount; appellant does not take a credit for such a payment on the return it filed for 2018; and respondent states that it has no record of receipt of such a payment. Appellant has the burden of proving its entitlement to a refund. (*Appeal of Cornbleth*, 2019-OTA-408P.) It has not carried that burden here. We find that appellant has not shown that it made an \$84,320 estimated tax payment for the 2018 tax year. We also find that respondent correctly calculated the late-filing penalty.

Issue 3: Is appellant entitled to abatement of the estimated tax penalty?

As relevant here, corporations that are required to pay California franchise tax pursuant to Part 11 of the R&TC must make estimated tax payments. (R&TC, §§ 19023, 19025.) Generally, the payments are due in four installments on the fifteenth day of the fourth, sixth, ninth, and twelfth months of the taxable year. (R&TC, § 19025(b).) With exceptions not applicable here, corporations that fail to make timely estimated income tax payments are subject to an estimated tax penalty.⁵ (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. (*Appeal of Weaver Equipment Company* (80-SBE-048) 1980 WL 4976.) Consequently, appellant is not entitled to abatement of the estimated tax penalty.


⁵ 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.

HOLDINGS

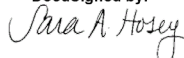
1. Appellant is not entitled to abatement of the late-filing penalty.
2. Respondent correctly calculated the late-filing penalty.
3. Appellant is not entitled to abatement of the estimated tax penalty.

DISPOSITION

Respondent’s action is sustained.

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 Michael F. Geary
 Administrative Law Judge

We concur:

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 Sara A. Hosey
 Administrative Law Judge

DocuSigned by:

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 Elliott Scott Ewing
 Administrative Law Judge

Date Issued: 7/22/2022