

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
JAKE J. GALLINETTI, INC.

) OTA Case No. 19105358
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OPINION

Representing the Parties:

For Appellant:

O. James White, CPA

For Respondent:

Eric R. Brown, Tax Counsel III
Maria E. Brosterhous, Tax Counsel IV

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Jake J. Gallinetti, Inc. (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant's claim for refund of \$252, plus applicable interest, for the 2016 taxable year.¹

Office of Tax Appeals Administrative Law Judges Teresa A. Stanley, Andrea L.H. Long, and John O. Johnson held a virtual oral hearing for this matter on November 18, 2021. At the conclusion of the hearing, the record was held open for additional briefing. At the end of the additional briefing period, on February 2, 2022, the record was closed, and this matter was submitted for an opinion.

ISSUE

Has appellant established reasonable cause to abate the late-filing penalty for 2016?

¹ FTB imposed a collection cost recovery fee of \$374, which appellant has not specifically disputed. In any event, there is no basis upon which we may waive or abate that fee once it is properly imposed. (R&TC, § 19254; *Appeal of GEF Operating, Inc.*, 2020-OTA-057P.)

FACTUAL FINDINGS

1. Appellant filed a 2016 California S Corporation Franchise or Income Tax Return (Form 100S) by mail on October 16, 2017.²
2. Prior to filing by mail, appellant attempted several times to e-file the tax return using Lacerte software. All attempts, made between February 13, 2017, and September 20, 2017, resulted in an error message. The return was never electronically filed. The first attempt to e-file in February was not transmitted because appellant used an older version of the Lacerte software that needed to be updated. The next attempts, made in February and March, resulted in an error message indicating that the EFIN (electronic filing identification number) was not registered to appellant's account.³ When appellant next attempted to e-file on August 29, 2017, the error message indicated that "[t]he state taxing agency rejected this return on Aug. 29, 2017." The detailed explanation indicated that the return was rejected because the amount on Form 100S, Schedule M-2, Line 5, cannot be a negative value in the electronic file. Appellant attempted, unsuccessfully, to e-file three more times, on September 8, 2017, on September 18, 2017, and on September 20, 2017, resulting in the same error message received on August 29, 2017.
3. On September 21, 2017, appellant submitted an online Business Entity e-file Waiver Request. Appellant indicated in the request that the software used was Lacerte, that the reason for the waiver was "reasonable cause," and that the explanation was "Rejection of 100S for negative number in M-2 line 5."
4. The e-file waiver was automatically granted on September 21, 2017, for taxable year 2016 only. Appellant received confirmation of the waiver upon request and without any FTB personnel reviewing the waiver request or confirming the reason appellant gave for the waiver request.
5. FTB imposed a late-filing penalty and undertook collection activities when appellant failed to pay the penalty plus interest.

² A copy of appellant's return submitted by FTB contains the date October 15, 2017. The parties agree that the tax return was filed on October 16, 2017.

³ The incorrect EFIN caused the attempt to file appellant's federal tax return to fail, likely resulting in failure to transmit the California return.

6. Appellant paid the liability and filed a claim for refund based on reasonable cause for the late filing, which FTB denied. This timely appeal followed.

DISCUSSION

A California S Corporation is required to annually file an income tax return by the 15th day of the third month following the close of its taxable year. (R&TC, § 18601(d)(1).) For calendar year S corporation taxpayers, the due date for the return is March 15. For taxable years beginning on or after January 1, 2016, FTB grants an automatic extension to file by the 15th day of the ninth month, which is September 15 for calendar year S corporation taxpayers. (R&TC, § 18604(a); FTB Notice 2016-4.) When a tax return is not filed within the extended period for filing, FTB imposes a per-shareholder late-filing penalty. (R&TC, § 19172.5.) The penalty may be abated based on a showing of reasonable cause. (R&TC, § 19172.5(a); *Appeal of Quality Tax & Financial Services, Inc.*, 2018-OTA-130P.) Reasonable cause requires a showing that the taxpayer acted as an ordinarily intelligent and prudent businessperson would have acted under similar circumstances. (*Appeal of Quality Tax & Financial Services, Inc.*, *supra*.)

Appellant asserts that because October 15, 2017, was a Sunday, it timely filed its income tax return on October 16, 2017. The due date for appellant's return, however, was March 15, 2017, and the extended filing date was September 15, 2017. Because of appellant's mistaken belief that the extended filing date was October 15, 2017, appellant waited until what it believed to be the last minute to mail the return, and thereby filed late. Therefore, the late-filing penalty was correctly imposed.⁴

Appellant claims that even if the return was filed late, it had reasonable cause for the late filing. Appellant contends that it acted reasonably by attempting to e-file the 2016 tax return several times, but all attempts failed.⁵ Appellant asserts that FTB rejected the return even though there was nothing wrong with it.

FTB states that it did not receive or reject any e-filed tax return of appellant. FTB asserts that when FTB rejects a tax return, a record is kept of the rejection, and it has no records

⁴ The calculation of the penalty amount is not disputed.

⁵ For business entities, such as appellant, using tax preparation software, tax returns must be submitted electronically unless a waiver is obtained. (R&TC, § 18621.10.)

showing that it did so in this case. Rather, Lacerte informed FTB that the transmission was rejected by Lacerte's own software due to a "schema validation error."⁶

The record does not support appellant's allegations. Appellant first attempted to e-file the 2016 income tax return on February 13, 2017, which was well before the original due date. The record shows that the first attempt to e-file in February was not transmitted because appellant used an older version of the Lacerte software that needed to be updated. The next attempts made in February and March resulted in an error message indicating that the EFIN was not registered to appellant's account. There is no evidence that appellant made another attempt for the next five months. When appellant next attempted to e-file on August 29, 2017, the error message indicated that "[t]he state taxing agency rejected this return on Aug. 29, 2017." The detailed explanation indicated that the return was rejected because the amount on Form 100S, Schedule M-2, Line 5, cannot be a negative value in the electronic file. The detailed explanation shows that an error in the electronic file caused the failure, which supports FTB's position that transmission failed prior to receipt by FTB. Appellant attempted to e-file again on September 8, 2017, and received the same error message. The record does not show why appellant did not try to correct the error or seek a waiver to mail the return after the August 29, 2017, and September 8, 2017 failed transmissions. Instead, it appears appellant again attempted to transmit the return on September 18, 2017, and September 20, 2017, both of which were already after the extended due date. Appellant also does not explain why it did not immediately mail in the return after requesting and receiving an automatic one-year waiver to e-file on September 21, 2017. Instead, appellant waited nearly three weeks to file by mail.

We believe that a reasonably prudent businessperson would have corrected the issues indicated in Lacerte's error messages. Furthermore, a reasonably prudent businessperson would not have waited for five months to fix the EFIN issue and attempt to re-transmit the return.⁷ When appellant received an error message that appeared to be out of its control on August 29, 2017, and September 8, 2017, it could have requested the e-file waiver. The e-file waiver is automatic and immediate, and appellant could have done that at any time after the

⁶ An FTB agent contacted Lacerte by email to inquire why the return was not transmitted. An FTB affidavit indicates that the reason was due to a "schema validation error." The email and response are not in our record.

⁷ The federal return was not processed on March 6, 2017, because it could not be validated due to an incorrect EFIN. Appellant's federal tax return was not successfully filed until August 29, 2017, 5 months later.


failed transmission on August 29, 2017, instead of waiting until September 21, 2017. Appellant’s postmark only needed to be on or before September 15, 2017, and a reasonably prudent businessperson would have obtained the waiver and mailed the return by this date. (See R&TC, § 21027.) We find that, based on the above, appellant has failed to establish reasonable cause to abate the late-filing penalty.⁸

HOLDING

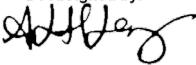
Appellant has not established reasonable cause to abate the late-filing penalty for 2016.

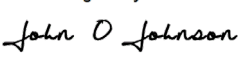
DISPOSITION

FTB’s action is sustained.

DocuSigned by:

0CC6C6ACCC6A44D...
Teresa A. Stanley
Administrative Law Judge

We concur:

DocuSigned by:

272945E7B372445...
Andrea L.H. Long
Administrative Law Judge

DocuSigned by:

873D9707D9E64E1...
John O. Johnson
Administrative Law Judge

Date Issued: 4/6/2022

⁸ Appellant requests that the late-filing penalty be abated on a one-time basis in the “spirit of cooperation between taxpayers and taxing authorities.” However, unlike the IRS, California has not enacted legislation or otherwise instituted a means for abating late-filing penalties on a one-time basis for taxpayers with a prior good filing history.