

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 19105358
JAKE J. GALLINETTI, INC.)
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OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: O. James White, CPA

For Respondent: Eric R. Brown, Tax Counsel III

T. STANLEY, Administrative Law Judge: On April 6, 2022, the Office of Tax Appeals (OTA) issued an Opinion sustaining the action of respondent Franchise Tax Board (FTB) denying appellant's claim for refund of \$252 plus interest. In the Opinion, OTA found that appellant did not establish reasonable cause to abate a late-filing penalty. Appellant timely filed a petition for rehearing (petition) under Revenue and Taxation Code section 19334. After considering the petition, OTA concludes appellant has not established a basis for rehearing.

OTA may grant a rehearing where one of the following grounds is met and materially affects the substantial rights of the party seeking a rehearing: (1) an irregularity in the appeal proceedings which occurred prior to the issuance of the Opinion and prevented the fair consideration of the appeal; (2) an accident or surprise that occurred during the appeal proceedings and prior to the issuance of the Opinion, which ordinary caution could not have prevented; (3) newly discovered, relevant evidence, which the filing party could not have reasonably discovered and provided prior to issuance of the written opinion; (4) insufficient evidence to justify the Opinion; (5) the Opinion is contrary to law; or (6) an error in law that occurred during the appeals hearing or proceeding. (Cal. Code Regs., tit. 18, § 30604(a)(1)-(6); *Appeal of Do*, 2018-OTA-002P.)

Appellant did not specify a ground for rehearing when filing the petition. Appellant asserts that its representative acted as an ordinarily prudent person although the filing process for


taxable year 2017 was not perfect. OTA interprets appellant's argument to mean that appellant believes there was insufficient evidence to justify the Opinion. (Cal. Code Regs., tit. 18, § 30604(a)(4).) To find that there was insufficient evidence to justify the Opinion, OTA must find that, after weighing the evidence in the record, including reasonable inferences based on that evidence, OTA clearly should have reached a different opinion. (Code Civ. Proc. § 657; *Appeal of Swat-Fame, Inc., et al.*, 2020-OTA-046P, citing *Bray v. Rosen, supra*, 167 Cal.App.2d 680, 683.)

Appellant's petition describes the reasonableness of its representative's actions, including in his ethical representation of clients over the course of a 53-year career advising clients on tax matters. Appellant's representative provides personal background information to support his reasonable business prudence noting as he did at the hearing that he has been married for 60 years and has raised children with college degrees and some with advanced degrees. Appellant's representative states that OTA's finding a lack of prudence in his own conduct is "unreasonable and imprudent."


On appeal, OTA does not question whether appellant's representative is a prudent or ethical businessperson in his dealings with his clients, nor does OTA question his character. The actions that were at issue on appeal were not those of the representative, but rather those of the corporation itself. A taxpayer's delegation to a representative of its duty to timely file cannot relieve the taxpayer of liability when a filing deadline is missed. The U. S. Supreme Court established a bright-line rule that a taxpayer's reliance on an agent, such as an accountant, to file a return by the due date is not reasonable cause. (*United States v. Boyle* (1985) 469 U.S. 241, 252 (*Boyle*)). Reasonable cause may be established when a taxpayer shows reliance on the substantive tax advice of an accountant or attorney. (*Id.*, at pp. 250-251.) California follows *Boyle* in that a taxpayer's reliance on a tax adviser must involve reliance on substantive tax advice and not on simple clerical duties. (*Appeal of Mauritzen*, 2021-OTA-198P.)


The Opinion held that the corporation (appellant) did not establish that it acted reasonably to ensure the filing deadline was met. Although appellant attempted several times to timely file the return, appellant did not address the error messages recorded by the Lacerte software in time to meet the extended filing deadline for a corporation, of September 15, 2018. The evidence in OTA's file is sufficient to show that appellant would have been apprised of the errors in time to correct the issue, but it did not until the extended filing deadline had passed.

That evidence shows that appellant did not take the necessary steps to ensure that its return was filed on time, and therefore, the evidence supports OTA’s Opinion which held that appellant failed to establish reasonable cause to abate the late-filing penalty. As appellant has presented no evidence to counter that conclusion, the petition must be denied.

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Teresa A. Stanley
Administrative Law Judge

We concur:

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Josh Aldrich
Administrative Law Judge

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Andrew J. Kwee
Administrative Law Judge

Date Issued: 8/24/2022