

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**LDB CORPORATION**

) OTA Case No. 22019560  
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**OPINION**

Representing the Parties:

For Appellant: Kathleen S. Brinkman, President

For Respondent: Christopher M. Cook, Tax Counsel III

N. RALSTON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, LDB Corporation (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$10,051.25<sup>1</sup> for the tax year ending April 30, 2019 (TYE 4/19).

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

**ISSUE**

Whether appellant has established reasonable cause for abatement of the late-payment penalty.

**FACTUAL FINDINGS**

1. Appellant is a small closely held corporation located in Texas.
2. During TYE 4/19, appellant sold corporate assets in California via a California based auction house.

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<sup>1</sup> Appellant previously requested abatement of both the late payment of estimated tax penalty and late-payment penalty, totaling \$15,681.24. This request was denied because appellant had not yet paid the penalties. Appellant subsequently filed a claim of refund for the late-payment penalty only, totaling \$10,051.25. Appellant’s opening brief confirms that the amount at issue is \$10,051.25.

3. Appellant timely filed a tax return for TYE 4/19, which showed total tax of \$183,550, estimated tax payments of \$210,000, and an overpayment of \$26,450.
4. Respondent's records showed that appellant did not make the reported \$210,000 of estimated payments during the tax year, but instead made an untimely payment of \$210,000 on August 30, 2019, which was after the payment due date of August 15, 2019.<sup>2</sup>
5. Respondent assessed penalties totaling \$15,681.24 consisting of an underpayment of estimated tax penalty of \$5,629.99 and a late-payment penalty of \$10,051.25.
6. Appellant subsequently paid the penalties and filed a claim for refund totaling \$10,051.25, which respondent denied.<sup>3</sup>
7. This timely appeal followed.

### DISCUSSION

R&TC section 19132 imposes a late-payment penalty when a taxpayer fails to pay the amount shown as due on the return by the date prescribed for the payment of the tax. 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, appellant does not dispute the imposition or calculation of the late-payment penalty, but rather requests that the penalty be abated due to reasonable cause.

The penalty may be abated if the taxpayer shows that the failure to timely pay was due to reasonable cause and not due to willful neglect. (R&TC, § 19132(a)(1).) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Moren*, 2019-OTA-176P). Reliance on a tax professional's advice for questions of substantive tax law, such as whether a liability exists, may constitute reasonable cause, where certain conditions are met, including where the tax professional has competency in the subject tax law and the tax professional's advice is based on

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<sup>2</sup> Generally, the date prescribed for the payment of the tax is the due date of the taxpayer's return (without regard to extensions of time for filing). (R&TC, § 19001.) Pursuant to R&TC section 18601(a) due date of appellant's return was the 15th day of the fourth month following the close of its taxable year. Since appellant's tax year ended on April 30, 2019, pursuant to R&TC sections 19001 and 18601(a), appellant's taxes for the TYE 4/19 were required to be paid on or before August 15, 2019.

<sup>3</sup> Appellant's claim for refund did not include the underpayment of estimated tax penalty. Thus, the underpayment of estimated tax penalty of \$5,629.99 is not at issue in this appeal.

the taxpayer's full disclosure of the relevant facts and documents. (*United States v. Boyle*, (1985) 469 U.S. 241, 250-251, *Appeal of Summit Hosting*, 2021-OTA-216P).<sup>4</sup> By contrast, reliance on an expert cannot function as a substitute for compliance with an unambiguous statute. (*United States v. Boyle, supra*, 469 U.S. at p. 251.)

Here appellant asserts that it had reasonable cause for its failure to timely pay the tax due because it reasonably relied on the erroneous advice of a California auction house, who in turn consulted with a California tax professional. Appellant contends that it generally does business solely in Texas, but that during the TYE 04/19 it sold corporate assets in Los Angeles at a nationally recognized auction company's location. Appellant also asserts that it was advised by the auction house, that it would not owe California income tax as a result of this sale. Appellant contends that prior to the due date of the California return, appellant was advised by its local CPA firm that California tax was due, and appellant immediately instructed the CPA firm to make an estimated payment to California. However, the CPA firm failed to make the payment prior to the due date.

Appellant's reliance on the advice of the auction house does constitute reasonable cause as there is no evidence that the auction house was a tax professional or had competency in tax law. (See *United States v. Boyle, supra*; *Appeal of Summit Hosting, supra*.) Although appellant asserts that the auction house consulted a tax professional before offering the advice, there is no evidence that the auction house did in fact consult a tax professional or that the tax professional was competent in California tax law and that the tax professional's advice is based on the taxpayer's full disclosure of the relevant facts and documents. OTA finds that an ordinarily intelligent and prudent businessperson would not rely on advice from an unknown third party to determine whether they owed tax.

Furthermore, appellant concedes in its opening brief that it was notified in July 2019, that the information from the auction house was in error. Thus, appellant was aware that California tax was due prior to the due date of August 15, 2019 due date. Regarding appellant's assertion that it instructed its local CPA to make an estimated payment as soon it became aware that tax was due, appellant is not relieved of liability from the penalty because its local CPA failed to

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<sup>4</sup> For purposes of the facts and issue in this appeal, an analysis of whether there is reasonable cause for a failure to timely file a tax return is substantially the same as an analysis of whether there is reasonable cause for a failure to timely pay tax. Thus, authorities persuasive or controlling in one analysis may be equally persuasive or controlling in the other. (See *Appeal of Moren, supra*; *Appeal of Triple Crown Baseball, LLC*, 2019-OTA-025P.)

timely execute appellant’s instruction and make the payment. (See *Appeal of Berolzheimer*, (86-SBE-172) 1986 WL 22860.)

HOLDING

Appellant has failed to establish reasonable cause for abatement of the late-payment penalty.

DISPOSITION

Respondent’s action in denying appellant’s claim for refund is sustained.

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*Natasha Ralston*  
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Natasha Ralston  
Administrative Law Judge

We concur:

DocuSigned by:  
*Michael F. Geary*  
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Michael F. Geary  
Administrative Law Judge

DocuSigned by:  
*Daniel Cho*  
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Daniel K. Cho  
Administrative Law Judge

Date Issued: 9/28/2022