

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
DENASH, LLC

) OTA Case No. 22029716
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OPINION

Representing the Parties:

For Appellant: A.K. Khan, CPA

For Respondent: Alisa L. Pinarbasi, Tax Counsel

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Denash, LLC (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$632 for the 2019 tax year.

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.1.) Appellant waived the right to an oral hearing; therefore, Office of Tax Appeals (OTA) decides the matter based on the written record.

ISSUES

1. Whether appellant has established reasonable cause for the late filing of its 2019 tax return under R&TC section 19131.
2. Whether appellant has established a legal basis to abate the per-shareholder late filing penalty imposed for the 2019 tax year under R&TC section 19172.5.

FACTUAL FINDINGS

1. Appellant was taxed as an S corporation and had two shareholders for the 2019 tax year. Appellant's 2019 California S Corporation Franchise or Income Tax Return (Form 100S) had an original filing due date of July 15, 2020.¹
2. On July 12, 2020, appellant timely filed its 2019 federal S corporation tax return by July 15, 2020, which was the extended original due date to file the 2019 federal tax return, as granted by the IRS due to the COVID-19 pandemic.
3. On June 2, 2021, FTB issued a Demand for Tax Return for the 2019 tax year to appellant after receiving information from the IRS that appellant filed a 2019 federal tax return with a California address, but FTB had not received a California return.
4. On July 6, 2021, appellant filed its 2019 California S corporation tax return and paid the minimum \$800 franchise tax. As relevant to this appeal, FTB imposed a late filing penalty of \$200 and a per-shareholder late filing penalty of \$432 because appellant did not timely file its 2019 California tax return. Appellant paid the amount due and submitted a claim for refund, which FTB denied.
5. This timely appeal followed.

DISCUSSION

Issue 1: Whether appellant has established reasonable cause for the late filing of its 2019 tax return under R&TC section 19131.

California imposes a penalty for the failure to file a return by its due date, unless the failure to file was due to reasonable cause and not due to willful neglect. (R&TC, § 19131.) When FTB imposes a late filing penalty, it is presumed to have been correctly imposed, and the burden of proof is on the taxpayer to show that reasonable cause exists to abate the penalty. (See *Appeal of Xie*, 2018-OTA-076P.) To establish reasonable cause, a taxpayer must show that the failure to file timely returns occurred despite the exercise of ordinary business care and prudence, or that cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of GEF Operating, Inc.*,

¹ FTB postponed the original due date for 2019 California tax returns to July 15, 2020, because of the COVID-19 pandemic. See *State Postpones Tax Deadlines Until July 15 Due to the COVID-19 Pandemic* (March 18, 2020) Franchise Tax Board News Release (<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>.)

2020-OTA-057P.) Generally, a taxpayer’s reliance on an agent (such as an accountant) to file a return or make timely payment of tax is not reasonable cause. (*U.S. v. Boyle* (1985) 469 U.S. 241 (*Boyle*)). Furthermore, unsupported assertions are not sufficient to satisfy a taxpayer’s burden of proof. (*Appeal of GEF Operating, Inc., supra.*)

Appellant does not contest whether the late filing penalty was properly computed. Appellant, however, contends that the late filing of its 2019 California tax return was due to reasonable cause because of COVID-19 pandemic-related issues, including staff shortages and delays in gathering necessary records to complete the tax return. Furthermore, appellant asserts that its “sole shareholder” is a physician² who was “extremely busy attending to patients” during the COVID-19 pandemic, which “rather than allow[ing] his patients to take second priority, the tax return was not filed in a timely matter.” Appellant also asserts that the “CPA firm [i.e., its tax preparer] experienced delays due to staffing issues related to the [COVID-19] pandemic and was unable to complete the tax return in a timely manner.”

However, appellant’s unsupported assertions do not demonstrate reasonable cause for the late filing of its 2019 California tax return. (*Appeal of GEF Operating, Inc., supra.*) Appellant has not provided any documentation or other corroborating evidence to support a finding that appellant’s failure to timely file the 2019 California tax return occurred despite exercising ordinary business care and prudence. (*Ibid.*; *Appeal of Tons* (79-SBE-027) 1979 WL 4068.) In fact, appellant does not describe what efforts, if any, were taken to timely file a return despite exercising ordinary business care and prudence. (*Ibid.*)

As for appellant’s contention that its tax preparer also experienced delays and was unable to timely complete and file its 2019 tax return, under *Boyle, supra*, appellant has a non-delegable duty to comply with tax deadlines. Therefore, appellant’s asserted reliance on a tax preparation firm, as its agent, to make timely tax filings does not constitute reasonable cause.³ Accordingly, appellant has not met its burden of proof to abate late filing penalty for the 2019 tax year under R&TC section 19131.

² Although appellant asserts that it has one shareholder, appellant reported two shareholders on its California tax return. Appellant does not explain why both shareholders were unable to gather necessary documents or timely file its 2019 California tax return, but they apparently were still able to timely file its federal tax return within the federal COVID-19 extended original due of July 15, 2020.

³ Appellant does not allege that it reasonably relied on an accountant or attorney for substantive advice on a matter of tax law, such as whether a liability exists, which could establish reasonable cause. (*Boyle, supra.*)

Issue 2: Whether appellant has established a legal basis to abate the per-shareholder late filing penalty imposed for the 2019 tax year under R&TC section 19172.5.

California imposes a per-shareholder late filing penalty on an S corporation for the failure to file a return on or before the due date, unless it is shown that the late filing is due to reasonable cause. (R&TC, § 19172.5(a).) For the 2019 tax year, FTB postponed the original due date of the 2019 California tax return to on or before July 15, 2020, because of the COVID-19 pandemic. The per-shareholder S corporation late filing penalty under R&TC section 19172.5 is computed at \$18 multiplied by the number of shareholders for each month, or fraction thereof, that the return is late, up to a maximum of 12 months. (R&TC, § 19172.5(b).) Appellant had two shareholders during the 2019 tax year and filed its return approximately one year late on July 6, 2021. Therefore, FTB properly imposed a \$432 S corporation late-filing penalty (\$18 x 2 shareholders x 12 months) for the 2019 tax year.

Appellant does not contest whether the per-shareholder late filing penalty for the 2019 tax year was properly imposed or computed. Rather, as discussed above, appellant argues reasonable cause due to COVID-19 pandemic-related issues.

Appellant's assertions do not demonstrate reasonable cause to abate the per-shareholder late filing penalty. For the same reasons as above, appellant did not support a finding that appellant's failure to timely file the 2019 California tax return occurred despite exercising ordinary business care and prudence. (*Appeal of Quality Tax & Financial Services, Inc.*, 2018-OTA-130P.) Also, appellant's reliance on its tax preparation firm to file timely are not reasonable cause. (*Boyle, supra.*) As such, appellant has not met its burden of proof to abate the per-shareholder late filing penalty imposed for the 2019 tax year under R&TC section 19172.5.

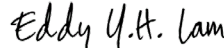
HOLDINGS

1. Appellant has not established reasonable cause for the late filing of its 2019 tax return under R&TC section 19131.
2. Appellant has not established a legal basis to abate the per-shareholder late filing penalty imposed for the 2019 tax year under R&TC section 19172.5.

DISPOSITION

FTB's action in denying appellant's claim for refund is sustained.

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Eddy Y.H. Lam

Administrative Law Judge

Date Issued: 10/5/2022