

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
FXG PARTNERS, INC.

) OTA Case No. 22029707
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OPINION

Representing the Parties:

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| For Appellant: | Sergio Medina II |
| For Respondent: | Carolyn S. Kuduk, Tax Counsel III Eric Yadao, Tax Counsel IV Christopher Tuttle, Tax Counsel III |

R. TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, FXG Partners, Inc. (appellant) appeals an action by the Franchise Tax Board (respondent) proposing a late-filing penalty of \$2,280.30 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. (R&TC, § 15676.2; Cal. Code Regs., tit. 18, § 30209.1.) Office of Tax Appeals (OTA) Administrative Law Judge Richard Tay held an electronic oral hearing for this matter, on November 17, 2022. At the conclusion of the hearing, OTA closed the record, and submitted this matter for an opinion.

ISSUE

Whether appellant has shown respondent erred in imposing the late-filing penalty for the 2019 tax year.

FACTUAL FINDINGS

1. Appellant, an S corporation, filed an untimely 2019 California income tax return on September 30, 2020, which is approximately six months after the July 15, 2020 due date.¹
2. On account of the late-filed return, respondent imposed the late-filing penalty.
3. Appellant paid the penalty and filed a claim for refund, which respondent denied.

DISCUSSION

Respondent imposes a late-filing penalty when a taxpayer does not timely file a return, unless it is shown that the failure to timely file was due to reasonable cause and not due to willful neglect. (R&TC, § 19131(a).) When respondent imposes this penalty, the law presumes that it is correct. (*Appeal of Xie*, 2018-OTA-076P.) It is uncontroverted that appellant filed an untimely California income tax return for 2019. Appellant also does not dispute the calculation of the penalty, and the record does not contain evidence of any such error. Rather, appellant argues reasonable cause existed to excuse its late filing. A taxpayer must provide credible and competent evidence to support a claim of reasonable cause; otherwise, the penalty cannot be abated. (*Ibid.*)

To support a claim of reasonable cause, a taxpayer must show that the failure to file a timely return occurred despite the exercise of ordinary business care and prudence, or that such cause existed as would prompt an ordinarily prudent businessperson to have acted under similar circumstances. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) To show reasonable cause, appellant argues that the disruption of the COVID-19 pandemic constituted reasonable cause. Additionally, appellant argues that the confusion regarding the California income tax return deadlines for the 2019 tax year also constituted reasonable cause.²

Neither argument is persuasive here. First, appellant does not provide sufficient facts that show how the COVID-19 pandemic prevented appellant specifically from filing a timely 2019 California income tax return. Appellant's representative explained at the hearing that appellant's employees and officers did not go into the office, which made it difficult to assemble the necessary documents to file the return. However, it is not clear that the difficulty obtaining

¹ Due to the COVID-19 pandemic, the deadline to file tax returns for the 2019 tax year was extended to July 15, 2020.

² Appellant also requests an abatement based on the federal first-time abatement program; however, there is no similar provision under California law that allows for penalty abatement on similar grounds for the 2019 tax year.

documents prevented appellant from timely filing. In fact, appellant's representative testified that appellant could have filed a timely income tax return, if it had correctly ascertained the filing deadline. Thus, by appellant's admission, the COVID-19 pandemic's disruption to regular business practices cannot excuse appellant's late filing.

Second, appellant's representative testified that he mistakenly thought the deadline to file appellant's 2019 California income tax return on extension was October 15, 2020, because respondent's public communications about the postponed deadline were confusing. Appellant provided copies of respondent's media statements regarding the filing deadlines in 2020, and argues that the postponed filing deadline was unclear because respondent's media release doesn't specifically mention S corporations.

It is well-established that ignorance of the law is not an excuse for failing to file a timely return. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) However, ignorance of the law *may* constitute reasonable cause when the state of the law is in flux and may be confusing to taxpayers. (See *J.J. Power, Inc. v. United States* (Fed.Cl. 2016) 125 Fed.Cl. 73, 87.; *Webster v. U.S.* (Ct.Cl. 1967) 375 F.2d 814.) Specifically, reasonable cause may exist when there is a lack of clarity in the law such that a reasonable person exercising ordinary business care and prudence would have filed late. (*J.J. Power, Inc. v. United States*, *supra*, at p. 87.) There is no such lack of clarity here.

Appellant's reliance on respondent's press release dated March 18, 2020, is misplaced. Although respondent postponed the original filing deadline, which may have caused some disruption and confusion, respondent's public statement clearly states:

FTB is postponing until July 15 the filing and payment deadlines for all individuals and business entities for: 2019 tax returns.

Additionally, respondent's Notice 2019-07, issued on December 2, 2019, states:

[T]he extended filing due date for S Corporations will remain the 15th day of the 9th month after the close of the taxable year.

A plain reading of these communications leads to the clear conclusion that the original filing due date for appellant's 2019 California income tax return was July 15, 2020, and the extended filing due date was September 15, 2020. There is no other evidence in the record of a lack of clarity such that a reasonable person would be unable to ascertain the filing deadline for an


S corporation's 2019 California income tax return. Consequently, appellant has not shown reasonable cause existed.

HOLDING

Appellant has not shown respondent erred in imposing the late-filing penalty for the 2019 tax year.

DISPOSITION

Respondent's action is sustained in full.

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Richard Tay
Administrative Law Judge

Date Issued: 2/6/2023