

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
TEXICON, INC.

) OTA Case No. 220410111
)
)
)
)
)

OPINION

Representing the Parties:

For Appellant: Barry R. DeVorzon, President

For Respondent: Christopher M. Cook, Tax Counsel
Eric Yadao, Tax Counsel IV

S. BROWN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Texicon, Inc. (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claims for refund of \$5,244 for the 2017, 2018, 2019, and 2020 tax years.

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.) Office of Tax Appeals (OTA) Administrative Law Judge Suzanne. B. Brown held an electronic oral hearing for this matter on December 29, 2022. At the conclusion of the hearing, the record was closed and this matter was submitted for an opinion.

ISSUE

Whether appellant has established reasonable cause to abate the late-filing penalties imposed under R&TC section 19131 for the 2018, 2019, and 2020 tax years and under R&TC section 19172.5 for the 2017, 2018, 2019, and 2020 tax years.

FACTUAL FINDINGS

1. Appellant is a California corporation with six shareholders. Appellant did not timely file its California S Corporation Franchise or Income Tax Returns for the 2017, 2018, 2019, and 2020 tax years.
2. On August 2, 2021, appellant late-filed its 2017 and 2018 tax returns. On October 15, 2021, appellant late-filed its 2019 and 2020 tax returns.
3. For the 2018, 2019, and 2020 tax years, appellant did not timely pay the \$800 minimum franchise tax. Appellant paid the tax for the 2018 tax year on October 27, 2021, and paid the tax for the 2019 and 2020 tax years on November 30, 2021.
4. For the 2017, 2018, 2019, and 2020 tax years, FTB imposed a per-shareholder late-filing penalty under R&TC section 19172.5. FTB also imposed late-filing penalties for the 2018, 2019, and 2020 tax years under R&TC section 19131. Appellant paid the amounts due and submitted timely claims for refund, which FTB denied.
5. This timely appeal to OTA followed.

DISCUSSION

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.) Under R&TC section 19131, the late-filing penalty is 5 percent of the amount of tax required to be shown on the return for every month that the return is late, without any regard to extensions of time for filing, up to a maximum of 25 percent. (R&TC, § 19131(a).)

R&TC section 19172.5(a) provides that if any S corporation fails to file a tax return within the time prescribed, then the corporation shall be liable for a penalty unless that failure is due to reasonable cause. The amount of the penalty is calculated as \$18 multiplied by the number of persons who were shareholders in the S corporation during any part of the taxable year multiplied by the number of months (or fraction thereof) the return is late, up to 12 months. (R&TC, § 19172.5(b).)

When FTB imposes a late-filing penalty, the penalty 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. (*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.*, 2020-OTA-057P.)

Each taxpayer has a personal, non-delegable obligation to file a tax return by the due date. (*United States v. Boyle* (1985) 469 U.S. 241, 251 (*Boyle*.) The U.S. Supreme Court established a bright-line rule holding that the failure to make a timely filing of a tax return is not excused by the taxpayer's reliance on an agent, such as an accountant, and such reliance is not reasonable cause for a late filing. (*Id.* at 252.) Precedential decisions that bind this agency have consistently applied the precedent set forth in *Boyle*. (See, e.g., *Appeal of Mauritzson*, 2020-OTA-198P.)

Here, appellant does not dispute the computation of the penalties, but contends that reasonable cause exists to abate the penalties. Appellant states that in January 2018, its accountant passed away and appellant's files were transferred to a new accountant who was unaware of appellant's existence. Thereafter, appellant's president switched to a new accountant who relied on the information in the filings by the previous accountant. Appellant's president testified that because appellant had no activity, income, or expenses for years, he forgot that appellant existed. Appellant states that these oversights were an honest mistake, and that when the accountant discovered that appellant existed, they immediately filed the tax returns.¹ Appellant provided documentary evidence including a letter from its current accountant, who states that previously he did not know appellant existed, and notes that it was an oversight by both accountants for failing to file the returns and an oversight by appellant's president for failing to notify the accountants that appellant existed.

The testimony of appellant's president is credible and consistent with the documentary evidence, and OTA is sympathetic to appellant's circumstances. However, appellant's position finds no support in the law.² As discussed above, the law imposes a non-delegable duty to

¹ Appellant's president further states that the penalties are prohibitive and he cannot afford them. However, there is nothing in the law that allows OTA to abate, reduce, or otherwise revise the penalties on those grounds. (See, e.g., *Appeal of Robinson*, 2018-OTA-059P.)

² R&TC section 19132.5, effective for tax years beginning on or after January 1, 2022, allows an individual taxpayer to request a one-time abatement of a timeliness penalty. Because the tax years at issue here precede 2022, this provision is inapplicable in appellant's case.

comply with tax deadlines, and as a result, the reasons for appellant’s failure to timely file and pay do not establish reasonable cause for abatement of the penalties.

HOLDING

Appellant has not established reasonable cause to abate the penalties.

DISPOSITION

FTB’s denial of appellant’s claims for refund is affirmed.

DocuSigned by:
Suzanne B. Brown
47F45ABE89E34D0...

Suzanne B. Brown
Administrative Law Judge

Date Issued: 3/3/2023