

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
TREQEN LLC

) OTA Case No. 20127081
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OPINION

Representing the Parties:

For Appellant: Monica Pangilinan

For Respondent: Sarah J. Fassett, Tax Counsel

J. JOHNSON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, appellant Treqen LLC appeals an action by respondent Franchise Tax Board denying appellant’s claims for refund for the 2017, 2018, and 2019 tax years in the amounts of \$761.55, \$761.54, \$125.59, respectively.¹

Appellant waived the right to an oral hearing and this matter is therefore decided based on the written record.

ISSUES

1. Whether appellant has shown reasonable cause for the late filing of its 2017 and 2018 tax returns.
2. Whether appellant has shown reasonable cause for the late payment of tax for the 2017, 2018, and 2019 tax years.
3. Whether appellant has shown that respondent abused its discretion in not abating interest.

¹ The amounts at issue are comprised of penalties in the amounts of \$648 for late filing (per R&TC section 19172) and \$80 for late payment (per R&TC section 19132) for both 2017 and 2018, plus applicable interest, and an \$84 late payment penalty, plus applicable interest, for 2019. Appellant’s claims for refund for the 2018 and 2019 tax years were neither denied nor filed more than six months prior to the filing of this appeal, and therefore were not originally accepted as part of this appeal. (See R&TC, §§ 19324, 19331.) This matter was deferred to allow respondent to review the claims for 2018 and 2019, which it ultimately denied, and those years were then added to this appeal.

FACTUAL FINDINGS

1. Appellant, a three-member limited liability company (LLC) classified as a partnership for federal and California income tax purposes, filed its articles of organization on February 16, 2017, and filed its Certificate of Cancellation on December 14, 2020, with the California Secretary of State.
2. Appellant paid its \$800 LLC tax for the 2017 tax year on February 25, 2018, its \$800 LLC tax for the 2018 tax year on February 14, 2019, and its \$800 LLC tax for the 2019 tax year on March 4, 2020.
3. In February 2020, respondent issued a notice to appellant indicating that respondent had not received a tax return for 2017.
4. Appellant filed its LLC returns for all three years at issue on March 15, 2020. Each return reported only the \$800 LLC tax due, which had been paid by the date the return was filed.
5. In July and August 2020, respondent issued to appellant Notices of Balance Due for the years at issue, indicating that, due to penalties and interest, appellant had outstanding balances for the amounts at issue on appeal.
6. Appellant paid the balance due for each year and filed a claim for refund for each year.
7. Respondent denied appellant's claims for refund and this timely appeal followed.

DISCUSSION

Issue 1: Whether appellant has shown reasonable cause for the late filing of its 2017 and 2018 tax returns.

Appellant's arguments on appeal are focused on an alleged violation of its rights by respondent in not mailing a notice of the penalty amounts owed until July 2020.² Appellant asserts the penalties at issue should be abated based on this alleged failure by respondent. R&TC section 19172 provides that a late filing penalty is imposed if the return is not timely filed, but also provides that the penalty will be abated if it is established that the late filing was due to

² R&TC section 21026 requires respondent to issue annual written notices to taxpayers of their outstanding tax liabilities.

reasonable cause.³ It is unclear, however, how an alleged failure by respondent to report an outstanding liability, which necessarily would only be required after the due date for filing a return, can constitute reasonable cause for why appellant failed to timely file its returns for 2017 and 2018.

To the extent that appellant contends the penalties should be abated based on an alleged violation of any substantive or procedural right to due process, the Office of Tax Appeals does not have jurisdiction to make a determination on that claim. (Cal. Code Regs., tit. 18, § 30104(d).) Although appellant contends that it believed it was timely meeting any payment and return filing requirements, those assumptions were incorrect. Each taxpayer has a personal obligation to file its tax return by the due date, and ignorance of a filing requirement or misunderstanding of the law generally does not excuse a late filing. (See *Appeal of Wright Capital Holdings LLC*, 2019-OTA-219P.) Accordingly, appellant has not shown reasonable cause for the late filing of the 2017 and 2018 tax returns.

Issue 2: Whether appellant has shown reasonable cause for the late payment of tax for the 2017, 2018, and 2019 tax years.

The same argument regarding respondent's alleged failure to provide notice of an outstanding liability similarly fails to establish reasonable cause when it comes to the late payment of tax in this matter.⁴ R&TC section 19132 provides that a late payment penalty is imposed if the tax is not timely paid, but also provides that the penalty will be abated if it is established that the late payment was due to reasonable cause and not willful neglect. It is unclear how an alleged failure to send a notice of outstanding balance, which would necessarily only have been sent after the due date for timely payment had already passed, can constitute reasonable cause for why appellant failed to timely pay its tax for the years at issue.

Appellant indicates that it believed it was compliant with California law when it paid its annual LLC tax within the first few months following the end of the taxable year. However, a

³ Pursuant to R&TC section 18633.5, appellant was required to file its annual returns on the 15th day of the third month after the close of the tax year. As all returns were filed on March 15, 2020, only the 2019 tax return was timely. Appellant does not assert that it timely met the filing requirement for 2017 or 2018, but rather that the penalties imposed should be abated.

⁴ Pursuant to R&TC section 17941, appellant was required to pay its annual LLC tax on the 15th day of the fourth month of the tax year. Appellant does not assert that it timely met the payment requirement, but rather that the penalties imposed should be abated.

mistaken belief as to the proper due date for payment does not demonstrate that appellant's failure to timely pay the tax occurred despite the exercise of ordinary business care and prudence. (See *Appeal of Summit Hosting LLC*, 2021-OTA-216P.) Accordingly, appellant has not shown reasonable cause for the late payment of tax for the years at issue.

Issue 3: Whether appellant has shown that respondent abused its discretion in not abating interest.

In addition to the accrual of penalties, appellant contends interest accrued as a result of the alleged failure by respondent to send notice of an outstanding liability. While interest may be abated if it accrues due to an unreasonable error or delay by respondent's officer or employee in performing a ministerial or managerial act, this abatement is only applicable to interest that accrued after respondent has contacted appellant in writing with respect to the outstanding liability. (R&TC, § 19104(a)(1), (b)(1).) Here, respondent's first contact with appellant regarding any outstanding liability was the notices issued in July and August 2020. Accordingly, interest abatement is not available for any period prior to that notice. Furthermore, the record does not show an unreasonable error or delay by respondent's staff in performing a ministerial or managerial act between the date of the notices and the date of the payments that shortly followed, and therefore appellant has not shown interest abatement is warranted here.

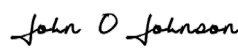
Appellant appears to generally argue that the accrual of penalties and interest would have been much lower had respondent notified appellant of potential outstanding liabilities earlier (e.g., closer in time to when the late LLC tax payments were remitted). However, it was not until appellant filed its returns that respondent had the necessary information to determine whether additional penalties and interest were owed, and notices of the outstanding liabilities were issued in a matter of months following receipt of appellant's returns. Accordingly, a significant factor in the passage of time between the due dates for returns and the payment of tax and when respondent issued the notices of outstanding liabilities is attributable to appellant's mistaken belief that it did not need to file California tax returns, and therefore interest abatement is not appropriate here. (R&TC, § 19104(b)(1).)

HOLDINGS


1. Appellant has not shown reasonable cause for the late filing of its 2017 and 2018 tax returns.
2. Appellant has not shown reasonable cause for the late payment of tax for the 2017, 2018, and 2019 tax years.
3. Appellant has not shown that respondent abused its discretion in not abating interest.


DISPOSITION

Respondent’s actions are sustained.

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 John O. Johnson
 Administrative Law Judge

We concur:

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 Kenneth Gast
 Administrative Law Judge

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 Suzanne B. Brown
 Administrative Law Judge

Date Issued: 5/12/2023