

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
GF JA INVESTMENTS, INC

) OTA Case No. 220510441
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OPINION

Representing the Parties:

For Appellant: Michelle Kershberg, Representative
For Respondent: Joel Smith, Tax Counsel III

A. WONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, GF JA Investments, Inc (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of a late payment penalty of \$6,776.70, plus interest, for taxable year ending February 2, 2021 (TYE 2021).

Appellant waived the right to an oral hearing, so the Office of Tax Appeals (OTA) decides this matter based on the written record.

ISSUE

Whether appellant has established reasonable cause to abate the late payment penalty.

FACTUAL FINDINGS

1. On November 3, 2021, appellant reported California net income of over \$1 million, tax of \$91,356, payments of \$1,000, and tax due of \$90,356 on its TYE 2021 California income tax return, which appellant timely filed due to an automatic six-month extension for filing the return. With its return, appellant remitted payment of \$90,356.
2. On December 7, 2021, FTB imposed a late payment penalty of \$6,776.70, plus interest, which appellant paid on February 7, 2022.
3. On February 15, 2022, appellant timely filed a claim for refund of the late payment penalty plus interest, which FTB denied.

4. This timely appeal followed.

DISCUSSION

A late payment penalty is imposed when a taxpayer fails to pay the amount shown as due on the return on or before the date prescribed for payment of the tax. (R&TC, § 19132(a)(1)(A).) Generally, the date prescribed for payment of the tax is the due date of the return (without regard to any extension of time for filing the return). (R&TC, § 19001.) For corporate taxpayers, such as appellant, the due date of its return (without regard to any extension), and the date prescribed for payment of the tax, is the 15th day of the fourth month following the close of its taxable year. (R&TC, § 18601(a).)

Here, appellant's TYE 2021 closed in February 2021, so the date prescribed for the payment of tax for that year is June 15, 2021. Appellant did not remit payment until November 3, 2021, so FTB properly imposed the late payment penalty.

However, a late payment penalty will be abated if a taxpayer shows that the late payment was due to reasonable cause and not due to willful neglect. (R&TC, § 19132(a)(1).) Generally, to establish reasonable cause, the taxpayer must show that the failure to timely pay occurred despite the exercise of ordinary business care and prudence. (*Appeal of Moren*, 2019-OTA-176P.) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid.*) Unsupported assertions are insufficient to satisfy the taxpayer's burden of proof. (*Ibid.*)

On appeal, appellant contends that its late payment was due to reasonable cause and not willful neglect. Specifically, appellant asserts that it timely and in good faith paid its projected California tax liability for TYE 2021, which was based on the estimated income received from a passthrough entity. To estimate this income, appellant asserts that it relied upon the guidance and calculations of its income tax return preparer. However, appellant alleges that the tax return preparer's estimate was inaccurately low due to COVID-19 and a change in the passthrough entity's structure, which was unknown to appellant's tax return preparer because of staff turnover. The actual taxable income was substantially higher as reported in appellant's TYE 2021 California income tax return, which appellant timely filed with full payment of the tax due of \$90,356. Appellant also notes that it has a long history of timely paying its tax liabilities.

To establish that it had reasonable cause for untimely remitting tax for the TYE 2021, appellant must establish that it reasonably relied upon its tax return preparer for advice on

questions of substantive law, that the tax return preparer was competent in California tax law, and that the advice was based on appellant's full disclosure of relevant facts and documents. (See *Appeal of Summit Hosting LLC*, 2021-OTA-216P.) However, appellant has not provided any evidence of what facts or documents it disclosed to the tax return preparer, the tax return preparer's knowledge of (or experience in) California tax law, or the actual advice, guidance, or calculations it received from its tax return preparer. Accordingly, OTA concludes that appellant has not established that it reasonably relied upon its tax return preparer.

Further, asserting either lack of necessary information to make a reasonably accurate estimate of tax liability or difficulty in calculating a tax liability with available documentation does not, by itself, constitute reasonable cause for a late payment of tax. (*Appeal of Moren, supra.*) A taxpayer must show what efforts it made to acquire the information from the source that held it, and that difficulties in obtaining the necessary information led to the delay in payment. (*Ibid.*)

Here, appellant has not explained how COVID-19 caused its tax return preparer to inaccurately estimate appellant's income and tax liability for the TYE 2021. Additionally, appellant has not explained how, when, or why the passthrough entity's structure changed; nor has appellant described what information its tax return preparer sought or the notice the tax return preparer was provided regarding the structural change; and, more importantly, nor has appellant explained how the structural change led to an inaccurate estimate of appellant's income and tax. Finally, appellant has not explained the exact nature of its tax return preparer's staff turnover or how it contributed to the tax return preparer's lack of knowledge of the passthrough entity's structural change. Asserting that information was difficult to obtain without substantiating any efforts made to retrieve that information or otherwise showing that the information was unobtainable is not sufficient to show reasonable cause. (See *Appeal of Moren, supra.*)

Lastly, regarding appellant's history of timely paying its tax liabilities, OTA notes that the IRS administers a program called "First Time Abate," where the IRS may administratively abate the late payment penalty if taxpayers have timely filed returns and paid taxes due for the past three years. However, neither the California Legislature nor FTB has adopted a comparable

program for corporate taxpayers for the 2020 tax year.¹ Accordingly, OTA has no authority to grant relief of the late payment penalty because of appellant’s history of compliance.


For the reasons stated above, OTA concludes that appellant has not established reasonable cause to abate the late payment penalty.

HOLDING

Appellant has not established reasonable cause to abate the late payment penalty.


DISPOSITION

FTB’s action denying appellant’s claim for refund of a late payment penalty of \$6,776.70 for the TYE 2021 is sustained.


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Andrew Wong
Administrative Law Judge

We concur:

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Sheriene Anne Ridenour
Administrative Law Judge

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Josh Aldrich
Administrative Law Judge

Date Issued: 5/17/2023

¹ R&TC section 19132.5 allows for the abatement of first-time timeliness penalties, but only for individuals and only for tax years beginning on or after January 1, 2022.