

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
DELUXE TRANSPORT LLC

) OTA Case No. 221212103
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OPINION

Representing the Parties:

For Appellant: Paul Alexander

For Respondent: Brian Werking, Tax Counsel III

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Deluxe Transport LLC (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$2,074.02¹ for the 2021 taxable 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, the Office of Tax Appeals decides the matter based on the written record.

ISSUE

Has appellant established reasonable cause to abate the late-payment penalty?

FACTUAL FINDINGS

1. Appellant filed a 2021 California S Corporation Franchise or Income Tax Return (Form 100S) on May 4, 2022, reporting total tax of \$32,959, and tax due of \$32,159, which it paid late on May 12, 2022.
2. FTB imposed a penalty of \$624.81 for the underpayment of estimated tax, a late-payment penalty of \$1,929.54, and applicable interest of \$154.57.

¹ Appellant appeals only the late-payment penalty, which is \$1,929.54, plus applicable interest.

3. After deducting \$800.00 paid on July 21, 2021, and \$32,793.00 paid on May 12, 2022, appellant's outstanding liability was \$2,074.02,² which appellant paid on July 27, 2022.
4. Appellant requested a refund of the late-payment penalty and associated interest based on reasonable cause.
5. FTB denied appellant's claim for refund, and this timely appeal followed.

DISCUSSION

When an LLC elects to be taxed as an S corporation, as here, the entity is required to pay the annual tax on or before the 15th day of the third month of each taxable year. (R&TC, §§ 19001, 18601(d)(1).) R&TC section 19132(a)(1)(A) imposes a late-payment penalty when a taxpayer fails to pay the amount shown as due on the return by the date prescribed for the payment. The late-payment penalty may be abated if the taxpayer can show that the failure to make a timely payment of tax was due to reasonable cause and not due to willful neglect. (R&TC, § 19132(a).) To establish reasonable cause for the late payment of tax, the taxpayer must show that the failure to make a timely payment of the proper amount of tax occurred despite the exercise of ordinary business care and prudence. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.) Inability to pay the tax due to financial hardship may establish reasonable cause to abate the late-payment penalty. (*Ibid.*) However, if the difficulties simply cause the taxpayer to sacrifice the timeliness of one aspect of the taxpayer's affairs to pursue other aspects, the taxpayer must bear the consequences of that choice. (*Ibid.*)

Appellant does not contest whether the late-payment penalty was properly imposed or computed. Rather, appellant asserts that reasonable cause exists to abate the penalty. Specifically, appellant contends that it was necessary for the business to hold its money in the bank due to fluctuations in its payroll obligations. Appellant states that the fluctuations were caused by COVID-19 shutdowns and subsequent high employee turnover rates.

Appellant's arguments suggest that it was facing financial hardship due to the COVID-19 pandemic. However, appellant chose to use its funds for payroll purposes instead of paying its taxes when due. Appellant, therefore, sacrificed the timeliness of its tax payment in favor of its other financial obligations. Appellant has not explained why it did not set aside funds for taxes due on March 15, 2022, over the course of the year. Moreover, appellant has not shown how its

² The balance due was \$2,074.92; however, FTB canceled the remaining \$0.90 on July 29, 2022.


payroll fluctuations caused it to be unable to pay taxes on March 15, 2022, but did not affect its ability to pay less than two months later, on May 12, 2022. Appellant, therefore, has not established that its late payment occurred despite the exercise of ordinary business care and prudence.

HOLDING

Appellant failed to establish reasonable cause to abate the late-payment penalty.

DISPOSITION

FTB’s action denying appellant’s claim for refund is sustained.

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Teresa A. Stanley
Administrative Law Judge

Date Issued: 8/9/2023