

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 221212182
WIRELESS STRUCTURES CONSULTING,)
INC.)
_____)

OPINION

Representing the Parties:

For Appellant: Dean L. Allen, CPA

For Respondent: Christopher T. Tuttle, Tax Counsel III

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Wireless Structures Consulting, Inc. (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$4,239.91 for the 2018 tax year.¹

Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUES

1. Whether appellant has established reasonable cause to abate the late filing penalty.
2. Whether appellant has established reasonable cause to abate the notice and demand penalty (demand).
3. Whether appellant has established that the underpayment of estimated tax penalty (estimated tax penalty) should be abated.
4. Whether appellant has established reasonable cause to abate the per-shareholder late filing penalty.

¹ The refund amount consists of a late filing penalty of \$1,905.50, a demand penalty of \$1,905.50, an underpayment of estimated tax penalty of \$212.91, and a per-shareholder late filing penalty of \$216.00.

FACTUAL FINDINGS

1. Appellant, which is taxed as an S corporation and based in Oregon, did not file a timely 2018 tax return.
2. Through FTB's Integrated Non-Filer Compliance program, FTB obtained information from the California Department of Tax and Fee Administration, indicating that appellant may have received sufficient California source income to trigger a filing obligation for the 2018 tax year. Consequently, FTB issued appellant a Demand for Tax Return (Demand), which required appellant to file a 2018 tax return, provide evidence that a 2018 tax return had already been filed, or provide information showing it did not have a 2018 filing requirement. Appellant did not respond to FTB's Demand.
3. FTB then issued a Notice of Proposed Assessment (NPA) for the 2018 tax year that estimated appellant's California taxable income and proposed tax, penalties, a fee, and applicable interest. Appellant did not protest the NPA, which became a final liability and FTB began issuing collection notices.
4. On June 14, 2021, appellant untimely filed a 2018 California S Corporation Franchise or Income Tax Return, which reported tax of \$7,622 and self-assessed penalties and interest of \$3,283, for a total of \$10,905, which appellant paid.
5. FTB accepted appellant's return as filed, and based on that return, determined appellant was liable for \$4,239.91 in total penalties, consisting of a late filing penalty of \$1,905.50, a demand penalty of \$1,905.50, an estimated tax penalty of \$212.91, and per-shareholder late filing penalty of \$216.00. FTB then issued a Notice of Balance Due indicating that appellant had an outstanding balance due, which appellant paid.
6. Appellant filed a claim for refund, requesting abatement of the penalties totaling \$4,239.91 based on reasonable cause grounds. FTB denied appellant's refund claim, and this timely appeal followed.

DISCUSSION

Issue 1: Whether appellant has established reasonable cause to abate the late filing penalty.

California imposes a penalty for failure to file a return by its due date, unless the failure was due to reasonable cause and not due to willful neglect. (R&TC, § 19131.) When FTB imposes a late filing penalty, it 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 (*GEF Operating*)). Ignorance of a filing requirement or a misunderstanding of the law generally does not excuse a late filing. (*Ibid.*)

In addition, a taxpayer's reliance on an agent (such as an accountant or a tax attorney) to file a return is not reasonable cause. (*U.S. v. Boyle* (1985) 469 U.S. 241 (*Boyle*)). Reasonable cause may be found, however, when a taxpayer relies on substantive advice from an accountant or attorney on a matter of tax law, such as whether a liability exists. (*Boyle, supra*, 469 U.S. at p. 251.) Under these circumstances, a taxpayer must show that it reasonably relied on a tax professional for substantive tax advice and the following conditions are met: (1) the person relied on by the taxpayer is a tax professional with competency in the subject tax law; and (2) the tax professional's advice is based on the taxpayer's full disclosure of relevant facts and documents. (*Appeal of Summit Hosting LLC*, 2021-OTA-216P (*Summit Hosting*)). By contrast, reliance on an expert cannot function as a substitute for compliance with an unambiguous statute. (*Ibid.*)

Appellant requests abatement of the late filing penalty due to reasonable cause. Specifically, appellant asserts it did not timely file a 2018 California S corporation tax return because it "is based in and operates entirely in Oregon with only California sales," and its former CPA failed to advise appellant that its 2018 California sales exceeded the economic nexus sales threshold in R&TC section 23101(b)(2) that triggered a tax filing requirement. However, a review of the record does not show any facts or circumstances that would warrant a finding of reasonable cause. It is well-settled law that appellant's reliance on a tax preparer or an agent to timely file its taxes does not constitute reasonable cause because appellant has a personal, non-delegable obligation to file its tax return by the due date. (*Boyle, supra*.) In addition, to demonstrate reasonable cause based on reliance on a tax adviser, appellant must show it reasonably relied on its adviser's substantive tax advice. (*Summit Hosting, supra*.) Here, as a threshold matter, there is no evidence that appellant's former CPA provided substantive tax advice to appellant indicating that it did not have a 2018 California tax filing requirement.

Further, ignorance of a filing requirement or a misunderstanding of the law generally does not excuse a late filing. (*GEF Operating, supra.*) Accordingly, appellant has not met its burden of establishing reasonable cause to abate the late filing penalty.

Issue 2: Whether appellant has established reasonable cause to abate the demand penalty.

California imposes a penalty for the failure to file a return or provide information upon FTB's demand to do so, unless reasonable cause prevented the taxpayer from responding to the demand. (R&TC, § 19133.) The burden is on the taxpayer to prove that reasonable cause prevented the taxpayer from responding to the demand. (*GEF Operating, supra.*)

Appellant presents the same argument here as it did for requesting abatement of the late filing penalty. However, as discussed above, appellant has not provided any specific facts or evidence showing reasonable cause for not timely complying with the demand notice issued by FTB. Accordingly, appellant has not met its burden of establishing reasonable cause to abate the demand penalty.

Issue 3: Whether appellant has established that the estimated tax penalty should be abated.

An S corporation that underpays its estimated tax is penalized by an addition to tax equal to a specified rate of interest applied to the amount of the underpayment unless a statutory exception applies. (R&TC, §§ 19142, 19144.) There is no reasonable cause exception to the imposition of the underpayment of estimated tax penalty. (*Appeal of Weaver Equipment Co.* (80-SBE-048) 1980 WL 4976.) Because appellant only asserts that it had reasonable cause to abate the estimated tax penalty, there is no basis to abate the estimated tax penalty based on general reasonable cause-type arguments.

Issue 4: Whether appellant has established reasonable cause to abate the per-shareholder late filing penalty.

R&TC section 19172.5 provides that a per-shareholder late filing penalty shall be imposed when an S corporation fails to file a tax return on or before the due date, unless it is shown that the failure is due to reasonable cause. Reasonable cause requires a showing that the taxpayer acted as an ordinarily intelligent and prudent businessperson would have acted under similar circumstances. (*Appeal of Quality Tax & Financial Services, Inc.*, 2018-OTA-130P.) Here, appellant presents the same argument as it did for requesting abatement of the other

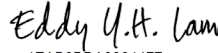
penalties. However, as discussed above, appellant has not established reasonable cause exists to abate the per-shareholder late filing penalty.

HOLDINGS


1. Appellant has not established reasonable cause to abate the late filing penalty.
2. Appellant has not established reasonable cause to abate the demand penalty.
3. Appellant has not established that the estimated tax penalty should be abated.
4. Appellant has not established reasonable cause to abate the per-shareholder late filing penalty.

DISPOSITION


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

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 Eddy Y.H. Lam
 Administrative Law Judge

We concur:
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 Kenneth Gast
 Administrative Law Judge

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 Keith T. Long
 Administrative Law Judge

Date Issued: 8/22/2023