

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 230112223
JLEE REAL ESTATE, INC.)
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OPINION

Representing the Parties:

For Appellant: Juliana Lee, President

For Respondent: Paige Chang, Tax Counsel

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, JLee Real Estate, Inc. (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of the \$2,115.89 late filing penalty for the 2019 taxable year.

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

ISSUE

Whether there was reasonable cause for appellant to file its 2019 tax return late.

FACTUAL FINDINGS

1. Appellant filed its 2019 tax return (Form 100) on December 16, 2021, without paying estimated taxes and showing a balance due. Consequently, respondent imposed late filing and estimated tax penalties.
2. Appellant was incorporated on July 17, 2019, and carried on the business of a predecessor S corporation (Predecessor).
3. After several notices from respondent, appellant paid the balance due and filed for a refund of the late filing penalty; respondent denied the refund claim.

DISCUSSION

A penalty shall be imposed for the failure to file a return on or before the due date unless it is shown that the late filing is due to reasonable cause and not due to willful neglect. (R&TC, § 19131(a).) To establish reasonable cause, the taxpayer must show that the failure to timely file a return occurred despite the exercise of ordinary business care and prudence. (*Appeal of GEF Operating Inc.*, 2020-OTA-057P.)

Respondent's imposition of the late filing penalty is presumed to be correct, and the burden of proof is upon the taxpayer to establish otherwise. (*Appeal of Xie*, 2018-OTA-076P.) Unsupported assertions are insufficient to meet this burden. (*Ibid.*)

Appellant contends there is reasonable cause to abate the late filing penalty because it was supposed to commence operations on January 1, 2020, and since appellant asserted that it conducted no business in 2019, appellant's accountant advised that appellant did not need to file a 2019 Form 100. However, some 2019 income and expenses were reported on appellant's (and not Predecessor's) books, triggering a 2019 filing requirement for appellant. The law provides that taxpayers have a non-delegable obligation to file a tax return by the due date; thus, a taxpayer's reliance on an agent, such as an accountant, to file a return by the due date is not reasonable cause. (*United States v. Boyle* (1985) 469 U.S. 241, 252; *Appeal of Quality Tax & Financial Services, Inc.*, 2018-OTA-130P.) Since the record does not show whether appellant's accountant was aware of the business transactions recorded by appellant (or if the accountant was aware, if appellant's reliance would then be reasonable), there is no basis to abate the late filing penalty. (See *United States v. Boyle*, *supra*.)

HOLDING

There was no reasonable cause for appellant to file its 2019 Form 100 late.

DISPOSITION

Respondent’s action is sustained.

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Tommy Leung
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Tommy Leung
Administrative Law Judge

We concur:

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Amanda Vassigh
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Amanda Vassigh
Administrative Law Judge

DocuSigned by:
Suzanne B. Brown
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Suzanne B. Brown
Administrative Law Judge

Date Issued: 8/23/2023