

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 220911494
NON STOP TOWING, INC.)
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OPINION

Representing the Parties:

For Appellant: Joe Ghiggioli, Representative

For Respondent: Brian Werking, Attorney

R. TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Non Stop Towing, Inc. (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$3,880 for the 2020 tax year.

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

ISSUE

Whether appellant has shown reasonable cause existed to excuse the late filing of appellant’s California franchise or income tax return for the 2020 tax year.

FACTUAL FINDINGS

1. Appellant is a corporation registered to do business in California. Appellant late-filed its California Corporation Franchise or Income Tax Return for the 2020 tax year on March 14, 2022.
2. Respondent accepted the late-filed return, but imposed the late filing penalty.
3. Appellant paid the balance due and filed a claim for refund of the estimated tax penalty and the late filing penalty.
4. Respondent denied the claim for refund.

5. This timely appeal of respondent's denial of the claim for refund of the late filing penalty followed.¹

DISCUSSION

Issue 1: Whether appellant has shown reasonable cause existed to abate the late filing penalty for the 2020 tax year.

Respondent imposes a late-filing penalty when a taxpayer does not timely file a return, unless it is shown that the failure to timely file was due to reasonable cause and not due to willful neglect. (R&TC, § 19131(a).) When respondent imposes this penalty, the law presumes that it is correct. (*Appeal of Xie*, 2018-OTA-076P.) It is uncontroverted that appellant filed an untimely California income tax return for 2020. Appellant also does not dispute the calculation of the penalty, and the record does not contain evidence of any such error. Rather, appellant argues circumstances existed to excuse its late filing, which is essentially arguing reasonable cause. A taxpayer must provide credible and competent evidence to support a claim of reasonable cause; otherwise, the penalty cannot be abated. (*Ibid.*)

To support a claim of reasonable cause, a taxpayer must show that the failure to file a timely return occurred despite the exercise of ordinary business care and prudence, or that such cause existed as would prompt an ordinarily prudent businessperson to have acted under similar circumstances. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.)

Appellant argues that the COVID-19 pandemic affected its income and caused the cost of hiring a tax preparer to rise so much it was unable to file a timely return. OTA acknowledges the difficulties presented by the COVID-19 pandemic; however, appellant's argument is unavailing. Appellant's unsupported assertions do not demonstrate reasonable cause for the late filing of its 2019 California tax return. (*Appeal of GEF Operating, Inc., supra.*) Appellant has not provided sufficient documentation or other corroborating evidence to support a finding that appellant's failure to timely file the 2020 California tax return occurred despite exercising ordinary business

¹ Appellant requested a refund of the late filing penalty and the estimated tax penalty, but only appealed respondent's denial of the refund of the late filing penalty. The amount in dispute on appellant's appeal equals the amount of the late filing penalty, and appellant submitted only the claim for refund denial letter of the late filing penalty. Thus, the estimated tax penalty is not an issue on appeal.

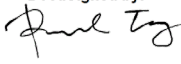
care and prudence. (*Ibid.*) Moreover, despite appellant’s alleged inability to hire a tax preparer, appellant has a non-delegable duty to file a timely tax return. (*U.S. v. Boyle* (1985) 469 U.S. 241.) Accordingly, appellant has not met its burden of proof to show reasonable cause existed for the 2020 tax year.

HOLDING

Appellant has not shown reasonable cause existed to excuse the late filing of appellant’s California Corporation Franchise or Income Tax Return for the 2020 tax year.

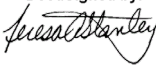
DISPOSITION

Respondent’s action is sustained in full.

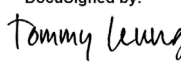
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Richard Tay
Administrative Law Judge

We concur:

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Teresa A. Stanley
Administrative Law Judge

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Tommy Leung
Administrative Law Judge

Date Issued: 9/5/2023