

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 221211985  
ANGELA T. HUANG DENTAL )  
CORPORATION )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellant: Travis Tueller, EA  
Stephen Nance, CPA

For Respondent: Brian Werking, Attorney

For Office of Tax Appeals: Ethan Choy, Graduate Student Assistant

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) 19324, Angela T. Huang Dental Corporation (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$695.16 for the 2021 tax 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 matter is being decided based on the written record.

**ISSUE**

Whether appellant has established reasonable cause for the late payment of tax.

**FACTUAL FINDINGS**

1. Appellant, an S corporation, utilized the services of a tax preparer to prepare its 2021 California S Corporation Franchise or Income Tax Return (Form 100S).

2. On April 15, 2022, the tax preparer sent the 2021 Form 100S it prepared to appellant. The cover letter stated that appellant's California tax payment of \$11,586 must be made by November 15, 2022.
3. Appellant timely filed its 2021 return within the extension period on April 15, 2022. The 2021 return reported an estimated tax payment of \$800 made on March 15, 2021, and a total amount due of \$11,586. Appellant paid the amount due on May 11, 2022.
4. Because appellant did not timely pay the reported balance due, FTB imposed a late payment penalty of \$695.16, plus interest, which appellant paid.
5. Appellant filed a timely claim for refund for the late payment penalty, which FTB denied.
6. This timely appeal followed.

### DISCUSSION

R&TC section 19132 imposes a penalty when a taxpayer fails to pay the amount shown as due on the return by the date prescribed for the payment of the tax. In the case of an S corporation, payment of the amount shown as due on the return must be made on or before the 15th day of the third month following the close of its taxable year (determined without regard to any extension of time for filing the return). (R&TC, §§ 18601(d)(1), 19001.) Appellant's tax was due on March 15, 2022, but appellant did not pay the entire amount due until May 11, 2022. Consequently, FTB properly imposed the late payment penalty.<sup>1</sup>

The late payment penalty may be abated if a taxpayer shows that its failure to timely pay was the result of reasonable cause and not willful neglect. (R&TC, §19132(a)(1).) To establish reasonable cause the taxpayer must demonstrate that its failure to timely pay the proper amount of tax 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 acted similarly under the same circumstances. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.) Generally, ignorance of the law is not reasonable cause for failure to comply with statutory requirements. (*Appeal of Porreca*, 2018-OTA-095P.) A taxpayer does not exercise ordinary business care and prudence when it fails to acquaint itself with the requirements of California tax

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<sup>1</sup> Appellant does not dispute the imposition or computation of the penalty and only argues that the penalty should be abated based on reasonable cause.

law. (*Ibid.*) One does not have to be a tax expert to know that tax returns have fixed filing dates and taxes must be paid when due. (*U.S. v. Boyle* (1985) 469 U.S. 241, 251;<sup>2</sup> *Appeal of Auburn Old Town Gallery, LLC*, 2019-OTA-319P.<sup>3</sup>) Each taxpayer has a personal, non-delegable obligation to pay tax by the due date. (See *Baccei v. U.S.* (9th Cir. 2011) 632 F.3d 1140, 1148 [extending determinations that timely filing is a nondelegable duty to late payments of tax].)

To establish reasonable cause based on reliance on a tax advisor, a taxpayer must show that it reasonably relied on the tax advisor for substantive tax advice. (See *Summit Hosting, supra*, citing *Boyle, supra*.)<sup>4</sup> In *Knappe v. U.S.* (9th Cir. 2013) 713 F.3d 1164, 1173, cert. den. (2013) 572 U.S. 952, the court concluded that reasonable cause had not been shown because the advice related to a due date that was unambiguous and non-substantive.

Here, appellant contends that its failure to pay timely was due to reliance on its tax preparer's erroneous advice in a letter that stated its tax payment was due on November 15, 2022. Appellant asserts that the error in the letter was due to an error in the tax preparation software. The tax preparer prepared a Form 100S for appellant and was aware that appellant was an S corporation. The due date for payment of an S corporation's tax is unambiguously provided by statute. (See R&TC, §§ 18601(d)(1), 19001.) Therefore, the advice of appellant's tax preparer does not constitute reasonable cause because it was not advice as to a matter of substantive tax law. Accordingly, appellant's assertion that it relied on the tax preparer's incorrect advice as to its tax payment deadline is not a substitute for compliance with an unambiguous statute.

Appellant provides no evidence to show the circumstances that caused the tax preparer to provide the erroneous advice regarding the payment deadline. Appellant asserts that the erroneous advice was due to an error in the tax preparer's software but provides no supporting evidence or information. In addition, tax preparation software is only as good as the information

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<sup>2</sup> Because the relevant language of R&TC section 19131 pertaining to the reasonable cause exception is patterned after Internal Revenue Code section 6651, federal court interpretation of the reasonable cause standard is persuasive authority in determining the proper application of this California statute. (See *Andrews v. Franchise Tax Bd.* (1969) 275 Cal.App.2d 653, 658.)

<sup>3</sup> Although this case concerns the filing deadline, the same reasoning generally applies to payment deadlines. (See *Appeal of Moren*, 2019-OTA-176P, fn. 12.)

<sup>4</sup> In addition, it must also be shown that the taxpayer relied on a tax professional with competency in the subject tax law, and the advice given by that tax professional was based on the taxpayer's full disclosure of relevant facts and documents. (*Appeal of Summit Hosting LLC, supra*.)

one inputs into it and does not, by itself, constitute professional tax advice that can be relied on for a reasonable cause analysis. (*Appeal of Mauritzson*, 2021-OTA-198P.) Appellant also does not provide evidence showing that it exercised ordinary business care and prudence, such as the steps taken by it to ascertain its proper payment due date. Accordingly, appellant has not shown reasonable cause for the late payment of tax.

HOLDING

Appellant has not established reasonable cause for the late payment of tax.

DISPOSITION

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

DocuSigned by:  
*Josh Lambert*  
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Josh Lambert  
Administrative Law Judge

Date Issued: 9/7/2023