

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 230413144
NEWBEEBA INC.)
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OPINION

Representing the Parties:

For Appellant: Bingfeng Yu, Founding Member

For Respondent: Joel M. Smith, Attorney

L. KATAGIHARA, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Newbeebea Inc. (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$865.50 for the 2019 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, § 30209.05.) 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 that it is entitled to abatement of the late filing penalty imposed under R&TC section 19131.
2. Whether appellant has established that it is entitled to abatement of the per-shareholder late filing penalty imposed under R&TC section 19172.5.

FACTUAL FINDINGS

1. Appellant was taxed as an S Corporation for the 2019 tax year and has three shareholders. Appellant's 2019 California S Corporation Franchise or Income Tax Return (Form 100S) had an original filing due date of July 15, 2020.¹
2. On February 2, 2022, FTB issued a Request for Past Due Corporation Tax Return to appellant because, as of that date, FTB had not received appellant's Form 100S for the 2019 tax year.
3. On February 8, 2022, appellant filed its Form 100S reporting tax due of \$870 but did not remit a tax payment.
4. Thereafter, FTB imposed late filing and per-shareholder late filing penalties totaling \$865.50, and applicable interest. Appellant subsequently paid the tax, penalties, and interest.
5. Appellant then timely filed a claim for refund requesting abatement of the penalties. FTB denied appellant's claim for refund, and this timely appeal followed.

DISCUSSION

Issue 1: Whether appellant has established that it is entitled to abatement of the late filing penalty imposed under R&TC section 19131.

R&TC section 19131 imposes a penalty when a taxpayer fails to file a tax return on or before its due date, unless the taxpayer establishes that the late filing was due to reasonable cause and was not due to willful neglect. When FTB imposes a penalty, the law presumes that the penalty was imposed correctly, and the burden of proof is on the taxpayer to show that reasonable cause exists to support abating the penalty. (*Appeal of Xie*, 2018-OTA-076P.) To establish that a failure to act was due to reasonable cause, the taxpayer must show that the failure 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 Summit Hosting LLC*, 2021-OTA-216P.) Each taxpayer has a non-delegable obligation to file a tax return by the due date. (*Ibid.*)

¹ In response to COVID-19, FTB postponed the due dates for returns, payments, and refund claims to July 15, 2020. (See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2020-3-state-postpones-tax-deadlines-until-july-15-due-to-the-covid-19-pandemic.html>; FTB Notice 2020-02.)

Appellant does not contest that its 2019 Form 100S filing was untimely or that FTB properly computed the late filing penalty. Instead, appellant seeks abatement of the penalty because it relied on its CPA to timely file its Form 100S and was unaware that it had not been timely filed. However, appellant has a non-delegable obligation to ensure its returns are timely filed, and therefore, its CPA's failure to timely file the 2019 Form 100S does not constitute reasonable cause. (See *Appeal of Summit Hosting LLC, supra.*)

Appellant further contends that abatement of the late filing penalty is warranted for the following reasons: (1) appellant's shareholders are natural persons; (2) appellant is a small business that was affected by the pandemic and has limited capital and cash; (3) appellant did not apply for any assistance from California or the federal government during or after the pandemic; (4) each shareholder included in their respective personal tax returns all income, deductions, and credits derived from the business; and (5) the penalty amounts are excessive. These assertions, however, do not demonstrate reasonable cause to abate the penalty, as they neither speak to any action appellant took to file a timely return nor show that appellant exercised ordinary business care and prudence with respect to filing its Form 100S. As to appellant's argument that the penalty amount is excessive, the calculation of the penalty is set by statute, and the Office of Tax Appeals has no authority to change it. (See *Appeal of Daneshgar, 2021-OTA-210P.*) For these reasons, appellant has not established that it is entitled to abatement of the late filing penalty.

Issue 2: Whether appellant has established that it is entitled to abatement of the per-shareholder late filing penalty imposed under R&TC section 19172.5.

R&TC section 19172.5 imposes a per-shareholder late filing penalty on an S corporation 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. When FTB imposes a penalty, the law presumes that the penalty was imposed correctly, and the burden of proof is on the taxpayer to show that reasonable cause exists to support abating the penalty. (*Appeal of Xie, supra.*) A taxpayer's reliance on an agent, such as an accountant, to file a return by the due date is not reasonable cause. (*Appeal of Quality Tax & Financial Services, Inc., 2018-OTA-130P.*) Reasonable cause requires a showing that the taxpayer acted as an ordinarily intelligent and prudent businessperson would have acted under similar circumstances. (*Ibid.*)

Again, appellant does not contest that its 2019 Form 100S filing was untimely or that FTB properly computed the penalty. Appellant's assertions regarding its request for abatement

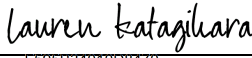
of the per-shareholder late filing penalty imposed under R&TC section 19172.5 mirror its assertions for the late filing penalty imposed under R&TC section 19131. However, none of appellant's assertions show that, under similar circumstances, an ordinarily intelligent and prudent businessperson would have acted as appellant did with respect to its filing of the Form 100S. Moreover, appellant's reliance on its CPA to timely file the Form 100S does not constitute reasonable cause. (See *Appeal of Quality Tax & Financial Services, Inc.*, *supra*.) Therefore, appellant is not entitled to abatement of the per-shareholder late filing penalty.

HOLDINGS

1. Appellant has not established that it is entitled to abatement of the late filing penalty imposed under R&TC section 19131.
2. Appellant has not established that it is entitled to abatement of the per-shareholder late filing penalty imposed under R&TC section 19172.5.

DISPOSITION

FTB's action is sustained.

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Lauren Katagihara
Administrative Law Judge

Date Issued: 11/27/2023