

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 221212045  
JETSTREAM ACQUISITION, LLC AND )  
JETSTREAM ACQUISITION, LLC (C SGNF) )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: Scott Y. Haynes, CPA

For Respondent: Paige Chang, Attorney

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Jetstream Acquisition, LLC (Jetstream) and Jetstream Acquisition, LLC (C SGNF) (Jetstream Shareholder Group) (collectively, appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$18,617.22<sup>1</sup> for the 2020 tax year.

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

**ISSUE**

Whether appellants have shown reasonable cause to abate the late payment penalty.

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<sup>1</sup> On appeal, appellants concede applicable interest. Appellants make no specific argument concerning the collection cost recovery fee of \$316; therefore, it will not be discussed further. The amount in dispute entirely consists of the late payment penalty.

FACTUAL FINDINGS

1. Jetstream, taxed as an S corporation, was formed on August 1, 2020. For the 2020 tax year, Jetstream elected to file Form 540NR (group nonresident return) on behalf of Jetstream Shareholder Group.<sup>2</sup>
2. Jetstream did not remit payment by May 17, 2021, the due date for payment on behalf of the Jetstream Shareholder Group.<sup>3</sup> On October 11, 2021, Jetstream filed the group nonresident return, reporting tax due of \$248,228, and on that same day, untimely remitted payment of the tax.
3. FTB processed the group nonresident return and issued Jetstream Shareholder Group a Notice of Tax Return Change – Revised Balance dated November 8, 2021, which, as relevant to this appeal, imposed a late payment penalty.
4. On June 6, 2022, Jetstream paid the balance due for the 2020 tax year and filed a claim for refund to abate the late payment penalty for reasonable cause.
5. On November 7, 2022, FTB denied the refund claim. This timely appeal followed.
6. OTA requested additional briefing from the parties. As relevant here, OTA requested that appellants provide information regarding their reasonable cause explanations and applicable documentation of the advice, if any, that appellants asserted that their tax counsel provided to them regarding the group nonresident return filing and tax payment due dates. Appellants did not respond. OTA also requested that FTB clarify the penalties (if any) at issue, provide a breakout of appellants' requested refund and relevant excerpts from the group nonresident return, and submit applicable correspondence not previously provided. In response, FTB explains that this appeal concerns the late payment penalty for the Jetstream Shareholder Group, submits a copy of the group nonresident return, and supplements the record with applicable correspondence.

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<sup>2</sup> In lieu of nonresident shareholders each filing California nonresident income tax returns, an S corporation doing business in, or deriving income from, California may elect to file a group return for one or more electing nonresident shareholders, and the S corporation, as agent for these electing shareholders, shall make the payments of tax, additions to tax, interest and penalties otherwise required to be paid by these shareholders. (R&TC, § 18535(a), (c).)

<sup>3</sup> In response to COVID-19, pursuant to R&TC section 18572(b), FTB postponed to May 17, 2021, the 2020 individual tax filing and payment due dates. (See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-03-state-tax-deadline-for-individuals-postponed-until-may-17-2021.html>.)

### DISCUSSION

R&TC section 19132(a)(1)(A) imposes a late payment penalty when a taxpayer fails to pay the amount shown as tax on the return by the date prescribed for the payment of the tax. Generally, the date prescribed for the payment of the tax is the due date of the return (without regard to extensions of time for filing). (R&TC, § 19001.) For individual filers, the filing and payment due dates for the 2020 group nonresident return were postponed from April 15, 2021, to May 17, 2021. (R&TC, §§ 18566, 18572.) Appellants do not dispute the imposition of the late payment penalty or FTB's calculations; rather, they assert that they had reasonable cause to abate the penalty.

The late payment penalty is presumed correct unless the taxpayer can demonstrate that the late payment resulted from reasonable cause and not willful neglect. (R&TC, § 19132(a)(1); *Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.) To establish reasonable cause for the late payment of the tax, a taxpayer must show that failure to make a timely payment of the proper amount of tax occurred despite the exercise of ordinary business care and prudence. (*Appeal of Moren*, 2019-OTA-176P (*Moren*).) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid.*) Asserted lack of documentation or difficulty in calculating a tax liability does not, by itself, constitute reasonable cause for a late payment of tax. (*Ibid.*) A taxpayer must present credible, competent, and relevant evidence to show error in FTB's determination. (*Appeal of Triple Crown Baseball LLC, supra.*) The most important factor in determining reasonable cause and good faith is the extent of the taxpayer's effort to assess his or her proper tax liability. (*Moren, supra.*)

On appeal, appellants assert that their tax preparer is at fault for providing incorrect advice as to the filing and payment due dates for the group nonresident return. Reliance on a tax advisor must involve reliance on substantive tax advice and not on simple clerical duties. (*Appeal of Summit Hosting LLC*, 2021-OTA-216P.) Despite OTA's request for additional briefing, appellants have not provided evidence of the advice, if any, they received from their tax preparer, such as written opinions by the tax preparer, or any other similar documents. (*Ibid.*)

Because appellants fail to provide credible and competent evidence of their tax preparer's advice, appellants fail to show reasonable cause for the late payment.<sup>4</sup> (*Ibid; Moren, supra.*)

Appellants claim that Jetstream acquired all the stock of another entity, the parties had difficulty determining income and filing the group nonresident return, and when appellants discovered that Jetstream required a California return, Jetstream filed the group nonresident return and paid the applicable tax. OTA interprets appellants' to assert that they paid their tax late because, after Jetstream acquired all the stock of another entity, they were uncertain how much tax was owed and which shareholders would be included in the nonresident group return.

However, despite OTA's request for additional briefing, appellants fail to provide information concerning this reasonable cause explanation and applicable documentation. The failure to timely remit the balance due on a tax liability caused by an oversight and lack of due diligence do not constitute reasonable cause. (*Appeal of Friedman, 2018-OTA-077P.*) Taxpayers who fail to acquaint themselves with the requirements of California tax law have not exercised ordinary business care and prudence. (*Appeal of Summit Hosting, LLC, supra; see Appeal of Cremel and Koepfel, 2021-OTA-222P* [taxpayer's sincere but mistaken belief that taxpayer had no filing requirement is not reasonable cause for late filing]; see also *Appeal of GEF Operating, Inc., 2020-OTA-057P* [taxpayer failed to show that, prior to the due date of the return, taxpayer consulted with a qualified tax professional and relied on advice that it had no California tax filing requirement].) Here, appellants fail to show what efforts, if any, they made to assess Jetstream Shareholder Group's California tax liability prior to the deadline. (*Moren, supra.*)

Appellants assert that, due to the transition of management in the entity Jetstream acquired, the parties (i.e., the buyer(s) and previous owner(s)/seller(s) of the acquired entity) had difficulty determining income for the previous owners in the period prior to acquisition, income for the period after acquisition, buyout for the previous owners and state allocations. However, lack of documentation or difficulty in calculating a tax liability, does not, by itself, constitute reasonable cause for a late payment of tax. (*Moren, supra.*)

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<sup>4</sup> It is unclear whether appellants sought advice from their tax preparer concerning whether Jetstream or its shareholders had California filing requirements or tax liabilities, or merely the filing and payment due dates; regardless, as appellants fail to provide evidence of their tax preparer's advice, they fail to show reasonable cause for the late payment.

Appellants further claim that Jetstream was dealing with the challenges related to the COVID-19 pandemic, and that Jetstream Shareholder Group unsuccessfully attempted to electronically file and make the required payment. However, appellants fail to provide credible evidence supporting their assertion that they made unsuccessful payment attempts. (*Appeal of Summit Hosting LLC, supra.*) Thus, appellants fail to establish reasonable cause on these bases.

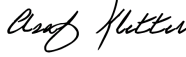
Appellants also request first time abatement. While the IRS has a penalty abatement program called First Time Abate, neither the California legislature nor FTB adopted a comparable penalty abatement program for the 2020 tax year at issue.<sup>5</sup> Thus, no relief is available on this basis.

### HOLDING


Appellants have not shown reasonable cause to abate the late payment penalty.

### DISPOSITION

FTB's action denying appellants' claim for refund is sustained.

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Asaf Kletter  
Administrative Law Judge

We concur:

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Ovsep Akopchikyan  
Administrative Law Judge

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Kenneth Gast  
Administrative Law Judge

Date Issued: 2/21/2024

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<sup>5</sup> R&TC section 19132.5, effective for tax years beginning on or after January 1, 2022, allows a taxpayer to request a one-time abatement of a timeliness penalty. This provision is inapplicable to the 2020 tax year at issue.