

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
INGRAIN SYSTEMS, INC.) OTA Case No. 230613687
)
)
)
)
)

OPINION

Representing the Parties:

For Appellant: Prabhakar Boyapally, CPA
For Respondent: AnaMarija Antic-Jezildzic,
Program Specialist

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Ingrain Systems, Inc. (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$2,419.64 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, § 30209.05.) Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUES

1. Whether appellant has shown reasonable cause to abate the late payment penalty.
2. Whether appellant is entitled to abatement of the underpayment of estimated tax penalty (estimated tax penalty).

FACTUAL FINDINGS

1. On September 15, 2022, appellant timely filed its 2021 California S Corporation Franchise or Income Tax Return (Form 100S). Appellant reported a franchise or income tax due of \$22,835, and \$445 in penalties and interest, resulting in a total amount due of \$23,280.

2. FTB accepted the return as filed, but appellant had not remitted any payment with the return. FTB issued a Notice of Balance Due informing appellant of the tax balance due, along with the imposed late payment penalty, estimated tax penalty, and applicable interest.
3. On November 30, 2022, FTB issued a Corporation Past Due Notice, followed by a Corporation Final Notice Before Levy and Lien on January 23, 2023. In both notices, FTB informed appellant of the remaining tax balance due, late payment penalty, estimated tax penalty, and applicable interest.
4. On January 31 and February 1, 2023, appellant contacted FTB by telephone and, among other things, stated that the payment was made along with the filing of Form 100S. FTB explained that it received no such payment. On February 1, 2023, FTB received an electronic web payment of \$25,895.09 from appellant. Thereafter, FTB canceled the remaining liability and updated appellant's tax account to reflect full payment.
5. On February 15, 2023, FTB received appellant's claim for refund. Appellant asserted that it moved from California to Texas, and was under the impression that it timely remitted the payment. However, when appellant learned that it failed to timely pay, appellant immediately remitted payment. Appellant also requested a first-time abatement.
6. FTB denied the claim for refund.
7. This timely appeal followed.

DISCUSSION

Issue 1: Whether appellant has shown reasonable cause to abate the late payment penalty.

R&TC section 19132 imposes a late payment penalty when taxpayers fail to pay the amount of tax shown as due 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 (determined without regard to any extension of time for filing the return). (R&TC, § 19001.) Appellant does not dispute that its payment is late or that FTB properly calculated the late payment penalty amount. Therefore, the only issue is whether appellant has demonstrated reasonable cause for its failure to timely pay its required taxes in full.

The late payment penalty may be abated if the taxpayer shows that the failure to make a timely payment of tax was due to reasonable cause and not willful neglect. (R&TC, § 19132(a)(1).) To establish reasonable cause for a late payment of tax, a taxpayer must show that the failure to make a timely payment of the proper amount of tax occurred despite the exercise of ordinary business care and prudence. (*Appeal of Scanlon*, 2018-OTA-075P.) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Friedman*, 2018-OTA-077P.) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of Scanlon*, *supra*.)

Appellant asserts that it was under the impression that the tax payment was timely submitted through a tax software system, and it was not until a telephone conversation with FTB that appellant discovered the payment was unsuccessful. Appellant contends that the nonpayment was due to a technical glitch that prevented the electronic payment, and that appellant paid the balance due after the telephone conversation with FTB. Additionally, appellant requests first-time abatement due to its good filing and payment history.

Although appellant asserts that it mistakenly thought that its tax payment was timely paid through a tax software system, an oversight alone is not enough to demonstrate reasonable cause. (*Appeal of Friedman*, *supra*.) The Office of Tax Appeals (OTA) has held that reasonably prudent taxpayers exercising ordinary business care and prudence would monitor their bank account and quickly ascertain whether a scheduled electronic payment to FTB was properly paid. (*Appeal of Scanlon*, *supra*.) Here, nothing in the record demonstrates that appellant checked its bank account, recognized that this significant tax payment had not been debited from its account, and promptly made arrangements for payment shortly after filing Form 100S on September 15, 2022. To the contrary, FTB issued appellant several notices (specifically, a Corporation Past Due Notice on November 30, 2022, and a Corporation Final Notice Before Levy and Lien on January 23, 2023) to appellant's last known address, informing appellant of its

tax balance due, late payment penalty, and estimated tax penalty.¹ Despite the notices, appellant did not remit its payment until February 1, 2023. In short, appellant's failure to monitor its bank account balance to determine if funds were timely paid to FTB does not demonstrate the type of due diligence that would be exercised by an ordinarily intelligent and prudent businessperson. (*Appeal of Friedman, supra.*) Based on the foregoing, OTA finds appellant has failed to demonstrate reasonable cause to abate the late payment penalties.

Appellant also requests for a first-time abatement of the late payment penalty based on its filing and payment history. However, California has not enacted legislation or otherwise instituted a means for abating the late payment penalty for a corporation based on its prior good filing and payment history.² Therefore there is no legal basis for OTA to abate the late payment based on appellant's alleged good filing and payment history.

Issue 2: Whether appellant is entitled to abatement of the estimated tax penalty.

A corporation subject to the tax imposed by Part 11 of the Revenue and Taxation Code must file a declaration of estimated tax and pay the estimated tax for each year. (R&TC, §§ 19023, 19025.) A corporation that underpays its estimated tax is liable for an addition to tax (i.e., a penalty) equal to a specified rate of interest applied to the amount of the underpayment. (R&TC, §§ 19142, 19144.) The estimated tax penalty cannot be abated on the grounds that the failure to pay was due to reasonable cause or extenuating circumstances. (*Appeal of Weaver Equipment Company* (80-SBE-048) 1980 WL 4976.) The estimated tax penalty is mandatory unless the taxpayer establishes that a statutory exception applies. (See R&TC, §§ 19147, 19148.)

Here, appellant presents the same reasonable cause arguments made with respect to the late payment penalty in its request for the abatement of the estimated tax penalty. However, unlike the late payment penalty, there is no authority to abate the estimated tax penalty based solely on reasonable cause. Furthermore, while there are a few limited statutory exceptions to

¹ It is well established that notices sent by FTB to a taxpayer's last-known address are sufficient, even if not received by the taxpayer. (R&TC, § 18416; *Appeal of Goodwin* (97-SBE 003) 1997 WL 258474.) The "last-known address" shall be the address that appears on the taxpayer's last return filed with FTB, unless the taxpayer has provided to FTB clear and concise written or electronic notification of a different address, or FTB has an address that it has reason to believe is the most current address for the taxpayer. (R&TC, § 18416(c).) Appellant does not argue, and evidence in the record does not indicate, that any of the notices were not sent to appellant's last-known address.

² R&TC section 19132.5 authorizes first-time abatement of certain timeliness penalties based on a taxpayer's filing and payment history; however, it is only available for individuals (not corporations, like appellant) and for tax years beginning on or after January 1, 2022.

the estimated tax penalty, but appellant does not contend, and the evidence does not show, that any of these exceptions apply. (See R&TC, §§ 19147, 19148.) Therefore, the estimated tax penalty cannot be abated.

HOLDINGS

1. Appellant has not shown reasonable cause to abate the late payment penalty.
2. Appellant is not entitled to abatement of the estimated tax penalty.

DISPOSITION

FTB's action is sustained.

DocuSigned by:
Eddy Y. H. Lam
1EAB8BDA3324477...

Eddy Y.H. Lam
Administrative Law Judge

Date Issued: 4/5/2024