

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
SOUTHERN CALIFORNIA PIPE TRADES ) OTA Case No. 221111879  
RETIREMENT FUND )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellant: Benjamin J. Peeler, CPA, J.D., LL.M.

For Respondent: Peter Kwok, Attorney

For Office of Tax Appeals: Mai Tran, Attorney

N. RALSTON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Southern California Pipe Trades Retirement Fund (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$29,008 for the 2020 tax year.<sup>1</sup>

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 reasonable cause to abate the late payment penalty.
2. Whether interest may be abated.

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<sup>1</sup> Although appellant appeals respondent’s denial of its claim for refund totaling \$29,008, respondent issued a refund of \$5,915.61 prior to this appeal for the underpayment of estimated tax penalty (estimated tax penalty) and accrued interest. Appellant self-reported the estimated tax penalty on its tax return. Respondent did not impose the estimated tax penalty when it processed appellant’s tax return. Therefore, respondent refunded the amount paid for the estimated tax penalty and accrued interest. The remaining amount at issue is \$23,092.39, which consists of the late payment penalty of \$19,432 and accrued interest.

FACTUAL FINDINGS

1. Appellant filed its 2020 Form 109, California Exempt Organization Business Income Tax Return, on October 15, 2021. On the return, appellant self-assessed and reported a late payment penalty of \$19,432, and accrued interest on the late payment penalty. Appellant made a payment to fully satisfy the penalty (including the estimated tax penalty not at issue) and interest with the return.
2. Appellant then filed a claim for refund for the penalties and interest. In its refund claim and on appeal, appellant contends that one of its investment firms changed its investment strategy which resulted in an unexpected gain. Appellant states the investment firm claimed the modified accelerated cost recovery system of depreciation on investments in low-income housing, which appellant was ineligible to claim. Appellant states that, when the low-income housing was sold in 2020, it resulted in unrelated business taxable income (UBTI), which could not be offset by appellant's net operating loss.<sup>2</sup> Appellant contends the investment strategy resulted in a sharp increase in income compared to prior filings. Appellant contends that it had no control over the investment strategy selected by the investment company. Appellant contends it did not know about this unexpected income until it received an amended Schedule K-1 from the investment company.<sup>3</sup>
3. After review, respondent denied appellant's claim for refund.
4. Appellant then filed this timely appeal.
5. Appellant subsequently filed an amended tax return, increasing taxable income and self-assessing additional tax. Appellant paid the additional tax reported on the amended return.<sup>4</sup>

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<sup>2</sup> Generally, nonprofit entities are subject to a tax on UBTI, which is generally defined as gross income derived from any regularly carried on unrelated trade or business, less the deductions allowed which are directly connected with the carrying on of such trade or business. (Internal Revenue Code (IRC), §§ 511, 512; R&TC, §§ 23731, 23732.)

<sup>3</sup> The appeal record does not show when appellant received the amended Schedule K-1.

<sup>4</sup> According to respondent, as of the date of its brief, it had not yet processed appellant's amended return. Appellant did not report any penalties on the amended return.

## DISCUSSION

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

R&TC section 19132 imposes a late payment penalty when a taxpayer fails to pay the amount required to be shown 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.) Appellant's tax payment was due on May 15, 2021. (R&TC, § 23771.) The parties do not dispute that appellant untimely paid the tax on October 15, 2021. Appellant however contends there is reasonable cause for its failure to submit a timely payment.

The late payment penalty may be abated if a taxpayer shows that the failure to make a timely payment of tax was due to reasonable cause and was not due to willful neglect. (R&TC, § 19132(a)(1).) Asserted lack of documentation or difficulty in calculating a tax liability does not, by itself, constitute reasonable cause for a late payment of tax. (*Appeal of Moren*, 2019-OTA-176P.) The determination of whether reasonable cause exists for the late payment requires an analysis of appellant's actions leading up to the late payment, the timing of those actions, and whether the failure to make a timely payment occurred despite the exercise of ordinary business care and prudence. (*Ibid.*) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid.*)

Appellant asserts it was unable to meet its payment obligation because it did not know that there was a tax liability until it received an amended Schedule K-1. However, appellant has not provided evidence to support this assertion, such as a copy of the amended Schedule K-1, or any evidence of its efforts to determine its tax liability prior to the date the tax was due. Appellant's assertion that it lacked knowledge of the additional tax until it received the amended Schedule K-1 alone does not constitute reasonable cause. Appellant contends that it had no control over the late payment, relying on *Connor v. Commissioner*, T.C. Memo. 1982-302 (*Connor*).<sup>5</sup> In *Connor*, the tax court determined that there was reasonable cause for failure to timely file a tax return where the taxpayer was "honestly ignorant" of her spouse's large income,

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<sup>5</sup> R&TC section 19132 is patterned on IRC section 6651. Federal law interpreting a federal statute may be considered highly persuasive when interpreting a California statute that is substantially similar to a federal statute. (*Douglas v. State of California* (1942) 48 Cal.App.2d 835, 838.)

her inquiries about income were angrily rebuffed by the spouse, and she had no choice but to trust her spouse to attend to tax matters. (*Ibid.*) Appellant asserts that it had no control over the investment decisions and depreciation election made by the investment firm. However, even if true, appellant has not provided any evidence that it was prevented from inquiring about the low-income housing investment or that it attempted to obtain information from the investment firm prior to the payment deadline on May 15, 2021. There is no evidence in the record of any steps appellant took to determine its tax liability. Therefore, appellant has not established reasonable cause to abate the late payment penalty.

Issue 2: Whether interest may be abated.


R&TC section 19101(a) requires a taxpayer to pay interest on unpaid tax for the period between the due date and the date of payment. Interest is not a penalty but is merely compensation for a taxpayer's use of money after it should have been paid to the state. (*Appeal of Gorin, 2020-OTA-018P.*) Appellant asserts that the unpaid liability was a result of unexpected investment decisions made without appellant's knowledge. However, there is no reasonable cause exception to the imposition of interest. (*Ibid.*) To obtain relief from interest, a taxpayer must qualify under one of three statutes: R&TC sections 19104 or 21012. Appellant has not alleged that it qualifies for interest abatement under these sections. Therefore, interest may not be abated.

HOLDINGS

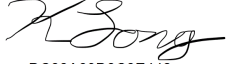
1. Appellant has not established reasonable cause to abate the late payment penalty.
2. Interest may not be abated.

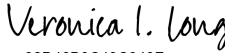
DISPOSITION

Respondent’s action is sustained.

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 Natasha Ralston  
 Administrative Law Judge

We concur:

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 Keith T. Long  
 Administrative Law Judge

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 Veronica I. Long  
 Administrative Law Judge

Date Issued: 4/10/2024