

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
) OTA Case No. 230513405
ENVIRONMENTAL CONSTRUCTION INC.) CDTFA Case IDs: 03-545-644, 03-578-284
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)
)

OPINION

Representing the Parties:

For Appellant: Farid Soroudi, President

For Respondent: Kevin B. Smith, Attorney

For the Office of Tax Appeals: Steven Kim, Attorney

L. KATAGIHARA, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, Environmental Construction Inc. (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA) denying appellant’s petition for redetermination (petition) of a Notice of Determination (NOD) issued February 18, 2022.¹ The NOD is for the period January 1, 2019, through December 31, 2020, and reflects a tax liability of \$426,330, accrued interest of \$20,228.45, and a \$23,933.04 failure-to-file penalty.² The NOD also reflects a payment/credit of \$346,724.40.

Appellant waived the right to an oral hearing; therefore, the matter was submitted to the Office of Tax Appeals (OTA) on the written record.

¹ Pursuant to R&TC section 6487(b), “[i]n the case of failure to make a return, every [NOD] shall be mailed within eight years after the last day of the calendar month following the one-year period for which the amount is proposed to be determined.” Therefore, CDTFA’s NOD was timely because it was issued prior to January 31, 2028 (for the 2019 tax year) and January 31, 2029 (for the 2020 tax year).

² CDTFA imposed the failure-to-file penalty because appellant failed to timely file a consumer use tax return (return) for the 2020 tax year; CDTFA did not impose the penalty for the 2019 tax year.

ISSUE

Whether appellant has established reasonable cause to relieve the failure-to-file penalty.

FACTUAL FINDINGS

1. Appellant is a California corporation operating as a construction contractor. Appellant's consumer use tax account has been in effect since January 1, 2016.
2. Appellant reports its use tax on an annual basis. However, appellant did not timely file a consumer use tax return (return) for the 2019 tax year. Consequently, on March 26, 2021, CDTFA instructed appellant to file its 2019 return. In that same correspondence, CDTFA provided appellant a limited access code, the use of which allowed appellant (or its third-party delegate) to file returns and make payments online.³
3. CDTFA provided appellant the same limited access code three additional times: on April 9, 2021, April 13, 2021, and April 27, 2021.
4. Appellant filed its 2019 return in May 2021.
5. As an annual filer, appellant's 2020 return was due on or before April 15, 2021, but due to the COVID-19 State of Emergency, CDTFA would have accepted the return as timely if filed on or before July 15, 2021.⁴
6. Appellant did not file a return for the 2020 tax year on or before July 15, 2021.
7. On February 18, 2022, CDTFA issued to appellant the NOD, which, as relevant here, included the failure-to-file penalty of \$23,933.04 for the 2020 tax year.
8. On February 21, 2022, appellant filed a petition with CDTFA disputing the failure-to-file penalty.⁵
9. On October 26, 2022, appellant filed its 2020 return.
10. On January 11, 2023, CDTFA issued a decision denying appellant's petition.
11. On January 17, 2023, appellant requested that CDTFA reconsider its decision.

³ In its opening brief, appellant refers to the "limited access code" by its former name, "express login code."

⁴ See <https://www.cdtfa.ca.gov/services/extensions-to-file.htm>.

⁵ Appellant's petition disputed the tax liability, interest, and failure-to-file penalty reflected on the NOD. However, in the appeal before OTA, the only issue in dispute is the failure-to-file penalty. Consequently, OTA will not discuss the other aspects of the NOD.

12. On May 18, 2023, CDTFA issued a supplemental decision, continuing to deny appellant's petition.
13. This timely appeal followed.

DISCUSSION

Taxpayers filing on an annual basis must file their returns on or before the last day of the month following the year's end. (See R&TC, § 6455(b).) Any taxpayer who fails to file a return by the due date shall pay a penalty of 10 percent of the amount of taxes, exclusive of prepayments, with respect to the period for which the return is required. (R&TC, §§ 6511, 6591.) The penalty may be relieved if the taxpayer proves that the failure to make a timely return or payment was due to reasonable cause and circumstances beyond the taxpayer's control and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect. (R&TC, § 6592.)

Here, in order to be timely, appellant was required to file its return by July 15, 2021. However, appellant did not file its return until October 26, 2022. Thus, OTA finds that CDTFA properly imposed the failure-to-file penalty.

Appellant contends that there is reasonable cause to relieve the failure-to-file penalty because CDTFA's inaction prevented appellant from filing its 2020 return. Specifically, appellant argues that CDTFA failed to provide appellant with a valid limited access code. Appellant asserts that when it attempted to file its 2020 return online, the limited access code CDTFA provided on March 26, 2021, was invalid. Therefore, appellant requested a new code from CDTFA in September 2021, but was not provided "access to the online portal" until October 26, 2022.⁶ In addition, appellant disagrees with the portion of CDTFA's decision that allegedly suggests CDTFA instructed appellant to file its return via other means.

Appellant's arguments regarding the September 2021 timeframe are misplaced. Once the July 15, 2021 grace period ended, the failure-to-file penalty attached. Thus, any request for a limited access code made by appellant after July 15, 2021, is irrelevant. Moreover, while the law requires taxpayers to timely file their returns, it does not require that the returns be filed online using a limited access code. Appellant has not explained why it was unable to file its return

⁶ CDTFA indicates its records show it approved third-party access for appellant's online account, but neither appellant nor CDTFA specify whether such "access" was the same limited access code CDTFA provided in March and April 2021, a different limited access code, or a different type of access altogether.

through a different method (e.g., by mail or in person) either before or after its unsuccessful attempt to use the limited access code. Similarly, appellant has not explained why it was able to file its 2019 return in May 2021 but unable to file its 2020 return at the same time.

In any event, the evidence shows that appellant did in fact have sufficient access to file its 2020 return by July 15, 2021. CDTFA provided appellant its limited access code four times between March 26, 2021, and April 27, 2021. Although appellant argues that the limited access code was not valid when it attempted to file its 2020 return, appellant has neither specified when it made such an attempt nor provided any documentary evidence that the limited access code was invalid.⁷ Furthermore, appellant filed its 2019 return in May 2021, which, if filed online, rebuts appellant's assertion that the limited access code was invalid during the relevant timeframe (i.e., between April 15, 2021, and July 15, 2021). Based on the above, OTA finds that appellant's failure to file a timely return was not due to reasonable cause and circumstances beyond its control.

Last, CDTFA's decision does not suggest CDTFA instructed appellant to file its return via other means or that appellant failed to follow such instructions.⁸ Therefore, CDTFA's assertion, as perceived by appellant, is of no consequence here.

⁷ As previously explained, to have any bearing on this appeal, appellant's attempt to file its 2020 return would have had to been made on or before July 15, 2021.

⁸ The decision instead indicates that other filing methods were available to appellant (as they are to all taxpayers). Under the circumstances presented here, CDTFA was not required to, on its own initiative, instruct appellant to avail itself to these other methods.

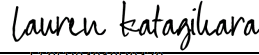
HOLDING

Appellant has failed to establish reasonable cause to relieve the failure-to-file penalty.

DISPOSITION

CDTFA's action is sustained.

DocuSigned by:



Lauren Katagihara
Administrative Law Judge

We concur:

DocuSigned by:



Michael F. Geary
Administrative Law Judge

DocuSigned by:



Andrew Wong
Administrative Law Judge

Date Issued: 4/30/2024