OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	)	OTA Case No. 18010879
	)	
QUALITY TAX & FINANCIAL SERVICES, INC.	)	Date Issued: September 14, 2018
	)	
	)	
	)	

OPINION

Representing the Parties:

For Appellant: Richard F. Smith, Jr., President
Quality Tax & Financial Services, Inc.

For Respondent: Mira Patel, Tax Counsel

A. ROSAS, Administrative Law Judge: Pursuant to California Revenue and Taxation Code section 19324,[1] Quality Tax & Financial Services, Inc. ("Appellant") appeals an action by the Franchise Tax Board ("Respondent") denying its claim for refund for $432 for the 2015 tax year.

Appellant waived its right to an oral hearing, and therefore we decide this matter based on the written record.

ISSUE

Did Appellant establish reasonable cause for filing its return late?

FACTUAL FINDINGS

1. For 2015, Appellant, an S-corporation, needed to file a California S Corporation Franchise or Income Tax Return (Form 100S) by March 15, 2016. Appellant had two (2) shareholders in 2015.
2. Appellant timely paid the $800 minimum franchise tax due for 2015.

[1] Statutory references are to the California Revenue and Taxation Code, unless otherwise noted.

3. Appellant tried to electronically file (e-file) its Form 100S and the federal tax return on March 14, 2016. Only the federal return was accepted. At the time, although Appellant's electronic filing system showed that its state return was "marked" and "converted" for electronic filing, Appellant did not realize that Form 100S was not actually transmitted, received, or accepted.
4. Appellant's Electronic Filing Client Status History shows five (5) transactions for March 14, 2016: (1) Return Marked for EF, (2) Return Failed Final Review, (3) Return Marked for EF, (4) Return Converted for EF, and (5) Return Marked for EF.[2]
5. On June 7, 2017, Respondent issued a demand, requesting Appellant "file a 2015 California business entity tax return." Shortly thereafter, on June 13, 2017, Appellant e-filed Form 100S for tax year 2015.[3] Appellant made another payment of $800.
6. On July 18, 2017, Respondent sent Appellant a Return Information Notice along with a refund of $368; Respondent had deducted a late-filing penalty of $432.[4]
7. Later that month, on July 26, 2017, Appellant filed a reasonable cause claim for refund for the 2015 late-filing penalty. The following month, on August 23, 2017, Respondent denied Appellant's refund claim, and Appellant filed this timely appeal.

DISCUSSION

Did Appellant establish reasonable cause for filing its return late?

California 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. (§ 19172.5(a).) For tax year 2015, Appellant needed to file Form 100S on or before the 15th day of the third month following the close of its taxable year. (§ 18601.) But Appellant neither filed by March 15, 2016, nor did it file within the automatic six-month

[2] It appears that Appellant inadvertently failed to actually transmit the return. Appellant's Electronic Filing Client Status History for March 14, 2016, does not indicate that the return was transmitted, received by Intuit, or accepted.

[3] Appellant's Electronic Filing Client Status History shows four (4) transactions for June 13, 2017: (1) Return Converted for EF, (2) Return Transmitted, (3) Return Received by Intuit, and (4) Return Accepted.

[4] Total credits and payments of $1,600, minus the $800 minimum franchise tax, minus a late-filing penalty of $432, equals a refund of $368.

extension allowed by section 18604. Instead, Appellant e-filed its return on June 13, 2017, fifteen months after the original due date; thus, the per-shareholder late-filing penalty was $432.[5]

A taxpayer has the burden of proving Respondent's tax determination to be erroneous. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509.) Each taxpayer has a personal, non-delegable obligation to file a tax return by the due date. (*Appeal of Thomas K. and Gail G. Boehme*, 85-SBE-134, Nov. 6, 1985.) The late-filing penalty may be abated if the taxpayer establishes that the failure to file a timely S-corporation return was due to reasonable cause. (§ 19172.5(a).) The Supreme Court established the bright-line rule that a taxpayer's reliance on an agent, such as an accountant, to file a return by the due date is not reasonable cause. (*United States v. Boyle* (1985) 469 U.S. 241, 252.) Reasonable cause requires a showing that the taxpayer acted as an ordinarily intelligent and prudent businessperson would have acted under similar circumstances. (*Appeal of Robert T. and M. R. Curry*, 86-SBE-048, Mar. 4, 1986; *Appeal of Howard G. and Mary Tons*, 79-SBE-027, Jan. 9, 1979.)

A facts and circumstances analysis is needed to properly determine whether a taxpayer who uses e-file technology can establish reasonable cause for filing its return late. Here, Appellant did not e-file Form 100S by the original due date or within the automatic extension period. Although Appellant tried to e-file on March 14, 2016, the Electronic Filing Client Status History (E-File History) stated: "Return Failed Final Review."

After receiving this error acknowledgment, the facts indicate that Appellant made another attempt to e-file the return on the same date: Form 100S was "Marked for EF," Form 100S was "Converted for EF," and then Form 100S was once again "Marked for EF." Although the facts are unclear, the E-File History suggests that there may have been some user-error and that Appellant may have inadvertently failed to actually transmit Form 100S. For example, by comparison, the E-File History for June 13, 2017, acknowledges "Return Transmitted," "Return Received by Intuit," and "Return Accepted," but these acknowledgements are conspicuously absent from the E-File History for March 14, 2016.

Appellant has not shown that the failure to timely e-file was anything but the result of its own oversight. For example, Appellant stated that it thought both the federal and state returns had been accepted but later realized that only the federal return was accepted. There is no

[5] The late-filing penalty is calculated as follows: number of months the S-corporation's return is late (not exceeding 12 months) X $18 X number of persons who were shareholders in the S-corporation during any part of the taxable year. (§ 19172.5(b).) Thus, for 2015: 12 months X $18 X 2 partners = $432.

evidence of whether Appellant reviewed the E-File History and acknowledgment records on March 14, 2016, or within the automatic extension period to confirm that Form 100S was transmitted, received, and accepted. Had Appellant reviewed the E-File History and acknowledgment records prior to the due date, it would have noticed that although Form 100S was marked and converted for e-file on March 14, 2016, it was not actually transmitted, received, or accepted.

When in doubt, a taxpayer using e-file technology should check the E-File History and acknowledgment records; it is a reasonable thing to do.[6] In the absence of an acknowledgment that a return was transmitted, received, or accepted, an ordinarily intelligent and prudent businessperson would have viewed the E-File History and acknowledgment records to confirm whether the return had been timely transmitted, received by Intuit, and accepted. Moreover, an ordinarily intelligent and prudent businessperson, after viewing the E-File History and acknowledgment records, and noticing that the return had not been accepted, would have made other attempts to file prior to the end of the extension period.

However, the evidence shows that while Appellant's Form 100S was ready to transmit electronically on March 14, 2016, Appellant took no actions until June 2017, after it received Respondent's demand.

In summary, Appellant did not show that it acted as an ordinarily intelligent and prudent businessperson would have acted under similar circumstances. Therefore, Appellant did not establish reasonable cause for filing its 2015 Form 100S late.

HOLDING

Appellant failed to establish reasonable cause for filing its return late; thus, Appellant is not entitled to abatement of the late-filing penalty.

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[6] For example, as part of California's business e-file program, if a taxpayer's business tax return passes all the electronic validation steps, Respondent sends an acknowledgement showing it accepted the electronic submission. (FTB Pub. 1346B, § 2.1.) However, when the electronic submission fails, the acknowledgment shows the reasons why Respondent's e-file program rejected the submission, and the taxpayer using e-file technology must correct the errors and retransmit the failed submission. (*Ibid*.) In addition, Respondent generally "follow[s] the e-file program requirements found in IRS Pubs 1345, 4163 . . . ." (*Id.* at § 2.2.) Based on these IRS publications, a taxpayer using e-file technology "*should check acknowledgement records regularly to identify returns requiring follow up action* and should take reasonable steps to address issues identified on acknowledgement records." (IRS Pub. 1345 at p. 29, emphasis added.) If a business return fails, the electronic sender receives an acknowledgement with the error description. (IRS Pub. 4163, § 3.2.) Furthermore, "[t]o ensure that the electronic return is complete and contains all required information," a taxpayer using e-file technology must follow several steps, including the obvious: "*Transmit the return*." (IRS Pub. 4163, § 3.2, emphasis added.)

DISPOSITION

We sustain Respondent's action in full.

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Alberto T. Rosas
Administrative Law Judge

We concur:

DocuSigned by:
John O Johnson
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John O. Johnson
Administrative Law Judge

DocuSigned by:
Nguyen Dang
4D465973FB44469...
Nguyen Dang
Administrative Law Judge