

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
LATARA ENTERPRISE, INC. )  
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OTA Case No. 230613662

**OPINION**

Representing the Parties:

For Appellant: Taleen Vartanian, Representative

For Respondent: Christopher T. Tuttle, Attorney

For Office of Tax Appeals: Louis Ambrose, Attorney

N. RALSTON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Latara Enterprise, Inc. (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$17,297.36 for the 2021 tax year.<sup>1</sup>

Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

**ISSUE**

Whether appellant has established reasonable cause for its late payment of tax.

**FACTUAL FINDINGS**

1. Appellant filed a California S Corporation return (Form 100S) for tax year 2021 on September 15, 2022, reporting a total amount due to respondent of \$217,017, which was submitted with the return.

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<sup>1</sup> Appellant’s refund claim requests a refund of \$18,329.38. However, FTB treated it as a refund claim in the amount of \$17,297.36, which is the amount of the late payment penalty at issue.

2. On April 3, 2023, respondent issued a Return Information Notice imposing a late payment penalty of \$17,297.36 and accrued interest.
3. On April 25, 2023, appellant submitted two payments totaling \$20,179.95.
4. On May 1, 2023, respondent received appellant's claim for refund in the amount of \$18,329.38, which requested abatement of the penalty for reasonable cause. In the refund claim, appellant stated that it had not "fully closed accounting and tax books" and, therefore, was unable to make an accurate estimate of the tax payment by the March 15, 2022, deadline.
5. By letter dated June 5, 2023, respondent denied the claim for refund of the late payment penalty in the amount of \$17,297.36. Appellant then filed this timely appeal.

### DISCUSSION

R&TC section 19001 provides that the personal income tax "shall be paid at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return)." R&TC section 19132 provides that a late payment penalty shall be imposed when a taxpayer fails to pay the amount shown as due on the return on or before the due date of the return. The late payment penalty has two parts. The first part is 5 percent of the total unpaid tax. (R&TC, § 19132(a)(2)(A).) The second part is a penalty of 0.5 percent per month, or portion of a month (not to exceed 40 months), calculated on the outstanding balance. (R&TC, § 19132(a)(2)(B).) Here it is undisputed that appellant failed to make timely payment of the tax, and appellant does not dispute that the penalty was correctly calculated in accordance with the statute. Therefore, the penalty was properly imposed.

However, the penalty may be abated if the taxpayer shows that the failure to make timely payment was due to reasonable cause and not willful neglect. (R&TC, § 19132(a)(1).) The taxpayer has the burden of proof to show that reasonable cause exists to support abatement of the late payment penalty. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.) To establish reasonable cause for a late payment of tax, a taxpayer must show that the failure to make a timely payment occurred despite the exercise of ordinary business care and prudence. (*Ibid.*) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Bindley*, 2019-OTA-179P.)

Here, appellant argues that its management faced the challenge of determining the allocation between tax years 2021 and 2022 of income received from a government agency in

December of 2021. Appellant maintains that the narrow time frame for making that determination, combined with the complexity of its accounting records, precluded the timely payment of the tax. However, asserting either lack of necessary information to make a reasonably accurate estimate of tax liability or difficulty in calculating a tax liability with available documentation does not, by itself, constitute reasonable cause for a late payment of tax. (*Appeal of Moren*, 2019-OTA-176P.) A taxpayer must show what efforts it made to acquire the information and that difficulties in obtaining the necessary information led to the delay in payment. (*Ibid.*)

Appellant states that “toward the end of December 2021” it received funds from the Health Resources and Services Administration (HRSA) and had 90 days to determine whether to use the funds or to repay that amount to HRSA. Appellant further states that as of March 15, 2022, its management had not made a “full assessment of how to allocate the funds to our 2021 costs.” Appellant states that, for that reason, it did not report any portion of the HRSA funds as income by the payment due date. However, appellant has not explained or provided evidence to show that, despite the exercise of ordinary business care and prudence, its management was unable to allocate those funds to tax year 2021 for the purpose of making a timely tax payment.<sup>2</sup> Pursuant to *Appeal of Moren*, *supra*, appellant must show the efforts made to acquire the information needed to make a reasonably accurate estimate of its tax liability, and that difficulties in obtaining the information led to the delay in payment. As appellant has not made such a showing, it has failed to establish that it failed to make a timely payment despite the exercise of ordinary business care and prudence. Moreover, appellant has failed to establish that it had difficulties in obtaining the information.

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<sup>2</sup> It appears that, under the 90-day deadline imposed by HRSA, appellant was required to provide the HRSA with its determination as to the use of those funds by late March 2022 or no later than one or two weeks after the March 15th due date. It further appears that appellant was able to determine the use of the funds and meet the HRSA deadline because income was allocated to tax year 2021. However, appellant does not explain or provide evidence showing why its management was unable to make that determination or a reasonable estimate of the allocation to 2021, which would have allowed it to accurately calculate and timely pay its tax.

HOLDING

Appellant has not established reasonable cause for its late payment of tax.

DISPOSITION

Respondent’s denial of appellant’s claim for refund is sustained.

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*Natasha Ralston*  
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Natasha Ralston  
Administrative Law Judge

We concur:

DocuSigned by:  
*Tommy Leung*  
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Tommy Leung  
Administrative Law Judge

DocuSigned by:  
*Teresa A. Stanley*  
0CC6C6ACCC6A44D...  
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Teresa A. Stanley  
Administrative Law Judge

Date Issued: 6/27/2024