

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 231214974
MARKETING HOLDINGS, INC.)
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OPINION

Representing the Parties:

For Appellant: Camilo Concha
For Respondent: Blake Cunningham, Specialist

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Marketing Holdings, Inc. (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$3,296.50 for the tax year ending December 31, 2021.

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

ISSUE

Whether appellant has established a basis to abate the per-shareholder late-filing penalty imposed under R&TC section 19172.5 and the late-filing penalty imposed under R&TC section 19131.

FACTUAL FINDINGS

1. Appellant is a single-shareholder S corporation with a tax year ending on December 31, 2021.
2. On October 6, 2022, appellant untimely filed a California S Corporation Franchise or Income Tax Return (Form 100S), approximately seven months after the filing due date of March 15, 2022.

3. FTB imposed a per-shareholder late-filing penalty under R&TC section 19172.5 of \$126.00 and a late-filing penalty under R&TC section 19131 of \$3,170.50.
4. Appellant paid the penalties and then filed a claim for refund, requesting that the penalties be abated for reasonable cause on the basis that appellant became a partner in an LLC during the taxable year, and, due to a miscommunication between appellant's accountant and the partnership's accountant, appellant did not receive Schedule K-1s in time to prepare its return before the due date.
5. FTB denied appellant's claim for refund. This timely appeal followed.

DISCUSSION

R&TC section 19172.5 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. For S Corporations such as appellant, the due date of its return (without regard to any extension) is the 15th day of the third month following the close of its taxable year. (R&TC, § 18601(d).)

R&TC section 19131 imposes a penalty when a taxpayer fails to file a return on or before its due date, unless the taxpayer establishes that the late filing was due to reasonable cause and not willful neglect.

Appellant does not dispute the imposition or computation of the penalties imposed under R&TC sections 19172.5 and 19131 but contends that the penalties should be abated for reasonable cause.

When FTB imposes a penalty, the law presumes that the penalty was imposed correctly, and the burden of proof is on the taxpayer to show that reasonable cause exists to support abating the penalty. (*Appeal of Xie*, 2018-OTA-076P.) To establish that a failure to act was due to reasonable cause, the taxpayer must show that the failure occurred despite the exercise of ordinary business care and prudence, or that cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of Summit Hosting LLC*, 2021-OTA-216P.) Each taxpayer has a non-delegable obligation to file a tax return by the due date. (*Ibid.*) A taxpayer's reliance on an agent, such as an accountant, to file a return by the due date does not establish reasonable cause. (*Appeal of Fisher*, 2022-OTA-337P.) Asserted lack of documentation or difficulty in calculating a tax liability does not, by itself, constitute reasonable cause. (*Appeal of Moren*, 2019-OTA-176P.)

Appellant asserts that the penalties should be abated because appellant unintentionally missed the filing deadline. Appellant's claim for refund stated that the late filing was the result of appellant becoming a partner in another LLC, and, due to a miscommunication between appellant's accountant and the partnership's accountant, appellant did not receive Schedule K-1s in time to prepare its return before the due date.


Appellant's assertion does not constitute reasonable cause to support abating the penalty because appellant has a non-delegable obligation to file a tax return by the due date. (*Appeal of Fisher, supra.*) The fact that appellant's accountant did not receive Schedule K-1s from the LLC in time to file the return is not cause for abatement because lack of documentation does not, by itself, constitute reasonable cause. (*Appeal of Moren, supra.*) Unlike the taxpayer in *Appeal of Moren*, who was first made aware of potential tax liability the date before the due date for payment and was unable to obtain clarification from the estate despite numerous attempts, in this case appellant became a member of the LLC in advance of the tax due date and has not established what steps were taken, if any, to timely obtain the tax information. Accordingly, appellant has not established reasonable cause to abate the penalties.

HOLDING

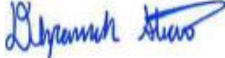
Appellant has not established a basis to abate the per-shareholder late-filing penalty imposed under R&TC section 19172.5 and the late-filing penalty imposed under R&TC section 19131.

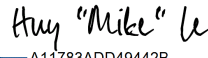
DISPOSITION

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

Signed by:

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Veronica I. Long
Administrative Law Judge

We concur:

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For
Lauren Katagihara
Administrative Law Judge

DocuSigned by:

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Huy “Mike” Le
Administrative Law Judge

Date Issued: 8/15/2024