

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
)
CLEARVIEW HEALTHCARE HOLDINGS,)
LLC)
)
)
)

OTA Case No. 230914273

OPINION

Representing the Parties:

For Appellant: Kateryna Melnikova, Representative

For Respondent: Alisa Pinarbasi, Attorney

E. PARKER, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Clearview Healthcare Holdings, LLC (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$23,055 for the 2021 tax year.

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

ISSUES

1. Whether appellant has shown reasonable cause to abate the late payment penalty.
2. Whether appellant is entitled to abatement of the underpayment of estimated tax penalty (estimated tax penalty).

FACTUAL FINDINGS

1. Appellant, classified as a partnership for federal and California income tax purposes, timely filed a 2021 group nonresident tax return on behalf of its qualifying nonresident partners reporting total tax due of \$286,883. On the return, appellant indicated it made estimated tax payments of \$384,076 for the 2021 tax year and requested a refund of \$97,193.

2. FTB's records, however, showed that appellant had only made payments of \$37,504 for the 2021 tax year. FTB issued a Notice of Tax Return Change - Revised Balance for the 2021 tax year with a balance due of \$275,237.89 that included the late payment and estimated tax penalties at issue here.¹
3. Appellant paid the balance of \$275,237.89, and on January 6, 2023, filed a claim for refund with FTB requesting abatement of the late payment penalty and the estimated tax penalty.
4. FTB denied the claim for refund, and this timely appeal followed.

DISCUSSION

Issue 1: Whether appellant has shown 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 shown as tax on the return by the date prescribed for payment of the tax. Generally, the date prescribed for payment of the tax is the due date of the return (determined without regard to any extension of time for filing the return). (R&TC, § 19001.) Appellant does not dispute that its payment is late or that FTB properly computed the late payment penalty. Therefore, the only issue is whether appellant has demonstrated reasonable cause for its failure to timely pay its required taxes in full.

The late payment penalty may be abated if the taxpayer shows that the failure to make a timely payment of tax was due to reasonable cause and not willful neglect. (R&TC, § 19132(a)(1).) To establish reasonable cause for a late payment of tax, a taxpayer must show that failure to make a timely payment of the proper amount of tax occurred despite the exercise of ordinary business care and prudence. (*Appeal of Moren*, 2019-OTA-176P.) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid.*) A lack of documentation or difficulty in calculating a tax liability does not, by itself, constitute reasonable cause for a late payment of tax. (*Ibid.*)

Appellant asserts its failure to make timely payment of its tax obligation was due to the complexity of a major transaction it underwent when it was acquired by a third party in the 2021

¹ This balance due reflects total tax liability as reported on appellant's return of \$286,883, less estimated tax and extension payments of \$37,504, plus the late payment penalty of \$18,703.43, estimated tax penalty of \$4,352, and interest and fees of \$2,803.46.

tax year and the overhaul of its tax compliance personnel. Appellant argues that since these were extraordinary one-time events, they support a reasonable cause determination. Additionally, appellant claims the penalty should be abated based on appellant's good compliance history.

Appellant, however, provides insufficient evidence in support of its contentions. Appellant points to the complexity of the transaction but does not provide supporting documentation or records to establish the complications it faced or the steps it took to ensure it timely paid its tax. (See *Appeal of Moren, supra.*) Appellant does not provide evidence establishing why it could not properly coordinate with its advisors and tax preparers to ensure it would make timely payments of tax by the payment due date for the 2021 tax year, which was April 15, 2022, the year following the complex transaction. An ordinarily intelligent and prudent businessperson in similar circumstances would be expected to take steps to ascertain or estimate its tax obligations or why it was prevented from doing so. (See *Ibid.*) Appellant, therefore, has not demonstrated reasonable cause for its failure to timely pay its required taxes in full by the due date of the return.

Lastly, regarding appellant's argument that its good tax compliance history supports a reasonable cause determination, unlike the IRS, neither the California Legislature nor FTB adopted a penalty abatement program for the 2021 tax year based on good tax compliance history.² A taxpayer's history of compliance does not, by itself, show reasonable cause, and is not grounds for abatement of the penalty.

Issue 2: Whether appellant is entitled to abatement of the estimated tax penalty.

R&TC section 19136 conforms to Internal Revenue Code (IRC) section 6654, with certain exceptions, and imposes an addition to tax, which is treated as a penalty, where a taxpayer fails to timely pay estimated tax. (R&TC, § 19136(a); IRC, § 6654.) There is no provision in the IRC or R&TC that allows the estimated tax penalty to be abated solely on a finding of reasonable cause. (*Appeal of Johnson*, 2018-OTA-119P.) The estimated tax penalty, however, may be waived under two limited exceptions: (1) where the underpayment of tax was due to "casualty, disaster, or other unusual circumstances" such that imposition of the penalty would be "against equity and good conscience"; or (2) where the underpayment is due to reasonable cause and not willful neglect, if the taxpayer either retired after having attained age

² R&TC section 19132.5, effective for tax years beginning on or after January 1, 2022, allows a taxpayer to request a one-time abatement of a timeliness penalty. This provision does not apply to the 2021 tax year.

62 or became disabled in the taxable year for which the estimated tax payments were required to be made or in the previous taxable year. (IRC, § 6654(e)(3)(A)-(B).)

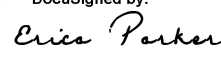
Appellant contends that the estimated tax penalty should be abated for the same reasonable cause arguments offered for the abatement of the late payment penalty. As noted above, the estimated tax penalty cannot be waived solely on the basis of reasonable cause. Under the first limited exception, appellant must show the underpayment was due to casualty, disaster, or other unusual circumstances such that the imposition of the penalty would be against equity and good conscience. The phrase “casualty, disaster, or other unusual circumstances” generally refers to unexpected events that cause a hardship or loss. (*Appeal of Johnson, supra.*) Here, appellant has not established the complex transaction it entered into caused an unexpected hardship or loss and thus appellant has not established it experienced a casualty, disaster, or other unusual circumstance such that imposition of the penalty would be against equity and good conscience. (See *Appeal of Johnson, supra* [sale of property producing large gain did not cause unexpected hardship or loss]; *Appeal of Saltzman, 2019-OTA-070P* [a transaction that resulted in a substantial payment from a partnership did not cause unexpected hardship or loss].) Since appellant does not argue it qualifies under the second limited exception, it need not be discussed here. Accordingly, appellant has not demonstrated it is entitled to abatement of the estimated tax penalty.

HOLDINGS

1. Appellant has not shown reasonable cause to abate the late payment penalty.
2. Appellant is not entitled to abatement of the estimated tax penalty.

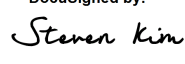
DISPOSITION

FTB's action denying appellant's claim for refund is sustained.

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Erica Parker
 Hearing Officer

We concur:

DocuSigned by:

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Steven Kim
 Administrative Law Judge

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Kenneth Gast
 Administrative Law Judge

Date Issued: 7/24/2024