

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 230613518
JETWAY EXPRESS)
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OPINION

Representing the Parties:

For Appellant: Chih Hsing Pei, President

For Respondent: Paige Chang, Attorney

For Office of Tax Appeals: Thomas Lo Grossman, Attorney

S. KIM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Jetway Express (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$12,281.36 for the 2021 tax year.

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 to abate the late payment penalty.

FACTUAL FINDINGS

1. On March 14, 2022, appellant made a payment of \$100,000 for the 2021 tax year.
2. On September 15, 2022, appellant filed a California S Corporation Franchise or Income Tax Return (Form 100S) for the 2021 tax year, reporting total tax of \$277,486¹ and claiming total payments of \$119,469.² Thus, appellant reported tax due of \$158,017 and

¹ The reported total tax of \$277,486 included tax of \$40,068 and a pass-through entity elective tax of \$237,418.

² The total payments include the \$100,000 payment on March 14, 2022, and a \$19,469 overpayment from the 2020 tax year.

- penalties and interest of \$281, for a total amount due of \$158,298. Appellant remitted a payment of \$158,298 with the return.
3. On December 28, 2022, FTB issued appellant a Return Information Notice to increase the reported amount of the prior year overpayment and to impose a late payment penalty of \$12,281.36, plus applicable interest. After accounting for the increased prior year overpayment, the Return Information Notice reflected a balance due of \$9,884.52. On December 31, 2022, appellant made a payment of \$9,884.52.
 4. Appellant sent FTB a letter dated December 31, 2022, requesting penalty and interest relief. FTB accepted appellant's letter as a claim for refund of the \$12,281.36 late payment penalty, plus applicable interest.
 5. On May 17, 2023, FTB issued appellant a letter denying the claim for refund.
 6. Appellant filed this timely appeal.³

DISCUSSION

R&TC section 19001 provides that franchise and 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 19904(a)(1) provides that the pass-through entity elective tax for taxable years beginning on or after January 1, 2021, and before January 1, 2022, is due and payable on or before the due date of the original return without regard to any extension of time for filing the return. R&TC section 19132 imposes a late payment penalty when a taxpayer fails to pay the amount shown as due on the return by the date prescribed for the payment of the tax. The penalty is computed as 5 percent of the total unpaid tax amount (or underpayment penalty) plus one-half of 1 percent of the outstanding liability for each subsequent additional month or fraction thereof for a maximum of 40 months (or monthly penalty). (R&TC, § 19132(a)(2).)

The late payment penalty will be abated if the taxpayer shows that the failure to make a timely payment of tax was due to reasonable cause and not due to willful neglect. (R&TC, § 19132(a)(1).) To establish reasonable cause for the late payment of tax, a taxpayer must demonstrate that the failure to make a timely payment of the proper amount of tax occurred despite the exercise of ordinary business care and prudence. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.) The taxpayer bears the burden of proving that an ordinarily intelligent

³ Although appellant requested waiver of interest in its claim for refund to FTB, appellant did not include or state any grounds for relief of interest in this appeal. Therefore, this Opinion does not address interest relief further.

and prudent businessperson would have missed the deadline under the same circumstances.
(*Ibid.*)

Here, appellant's tax payment was due and payable on the due date of the return, without regard to any extension of time for filing, which in this case was March 15, 2022. (See R&TC, §§ 18601(d)(1), 19001, 19904(a)(1).) Appellant did not pay the total amount due until September 15, 2022. Therefore, FTB properly imposed the late payment penalty.

Appellant contends that FTB incorrectly imposed the late payment penalty. Appellant argues that its business was closed due to COVID-19 until late September 2021, and that a majority of its income was earned in November and December 2021.⁴ However, appellant has not demonstrated how a business closure, which ended in September 2021, would have caused an ordinarily intelligent and prudent businessperson to fail to make a timely payment by March 15, 2022. Accordingly, appellant has not established reasonable cause to abate the late payment penalty.

⁴ Appellant appears to confuse the late payment penalty and the estimated tax penalty, which deals with estimated tax payments and uneven income earned during a tax year. (See R&TC, § 19136.) FTB did not impose an estimated tax penalty.

HOLDING

Appellant has not established reasonable cause to abate the late payment penalty.

DISPOSITION

FTB’s action denying the claim for refund is sustained.

DocuSigned by:
Steven Kim
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Steven Kim
Administrative Law Judge

We concur:

DocuSigned by:
Erica Parker
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Erica Parker
Hearing Officer

DocuSigned by:
Keith T. Long
DC88A00D8C3E442...
Keith T. Long
Administrative Law Judge

Date Issued: 9/10/2024