

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
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AMERICAN RECYCLING COMPANY, LLC)
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OTA Case No. 230513411

OPINION

Representing the Parties:

For Appellant: Michael R. Dufort, CPA

For Respondent: Alisa L. Pinarbasi, Attorney

For Office of Tax Appeals: Nguyen Dang, Attorney

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, American Recycling Company, LLC (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$66,463.39 for the 2021 taxable year.

Appellant waived the right to an oral hearing; therefore, the Office of Tax Appeals decides the matter based on the written record.

ISSUE

Has appellant established reasonable cause to abate the late-payment penalty?

FACTUAL FINDINGS

1. Appellant did not pay the total tax and fee amount, which included an elective pass-through entity tax (PTE tax), shown on its California LLC return by the March 15, 2022 payment deadline.
2. Prior to the payment deadline, appellant attempted three dishonored electronic payments, which, even if they had been successful, were insufficient to satisfy appellant’s 2021 liability.

3. The payments were dishonored because appellant incorrectly entered account information when scheduling the payments using FTB's Web Pay system.
4. Appellant fully paid its 2021 liability after the payment deadline via three payments made on April 13, 2022, and an additional payment made on September 14, 2022.
5. Consequently, FTB imposed a \$66,463.39 late-payment penalty.
6. Appellant paid the penalty and filed a refund claim seeking abatement of the penalty.
7. FTB denied appellant's refund claim, and this timely appeal followed.

DISCUSSION

For LLCs classified as a partnership, an entity doing business in California shall file its return on or before the 15th day of the third month following the close of its taxable year, which is March 15 for taxable years ending on December 31. (R&TC, § 18633.5(a).) For taxable years beginning on or after January 1, 2021, and before January 1, 2022, the PTE tax was due and payable on or before the due date of the original return. (R&TC, § 19904(a)(1).) R&TC section 19132 imposes a penalty when a taxpayer fails to pay the tax shown on a return by the original filing deadline. However, the late-payment penalty shall not apply if the failure to timely pay was due to reasonable cause and not willful neglect. (R&TC, § 19132(a).) To establish reasonable cause, the taxpayer must show that the failure to timely pay occurred despite the exercise of ordinary business care and prudence; in other words, taxpayers must demonstrate that they acted as an ordinarily intelligent and prudent businessperson would have acted under similar circumstances. (*Appeal of Friedman*, 2018-OTA-077P.) Taxpayers bear the burden of proving reasonable cause and lack of willful neglect. (*Ibid.*)

Appellant concedes that it did not timely pay its 2021 liability but argues there is reasonable cause for abating the penalty. Appellant contends that it was unable to properly compute its tax liability by the March 15, 2022 payment deadline due to: (1) a major fire at its facility on February 15, 2022; (2) staffing issues arising from the COVID-19 pandemic; (3) the inability of appellant's tax software to account for the elective PTE tax, which had been implemented for the first time in 2021; and (4) difficulty computing gain from an asset sale on November 9, 2021, resulting from the buyer's failure to provide appellant with a purchase price allocation prior to the payment deadline.

The fact that appellant attempted to make three timely, albeit dishonored, payments prior to the payment deadline, indicates that appellant was able to compute at least a portion of its 2021 liability by the March 15, 2022 payment deadline. Appellant's failure to properly enter its bank account details to ensure that these payments would be successful does not constitute reasonable cause for paying this portion of its 2021 liability after the payment due date. (*Appeal of Friedman, supra* [failure to timely remit payment due to a mistake or oversight does not, by itself, constitute reasonable cause].)

In support of its contention that it was unable to timely compute, and therefore pay, the remaining portion of its 2021 liability due to a fire, appellant provides a copy of a news article published by the Modesto Bee dated February 15, 2022, which reported that a "multi-alarm fire" had occurred at a recycling facility in the Morgan and Whitmore area of the city. Appellant also provides several news photos of firefighters combating a fire. However, these items do not identify the fire as occurring at appellant's facility, and even assuming there was a fire at appellant's facility on that date, the record does not show how, specifically, the fire impacted appellant's ability to compute the gain from its alleged asset sale. Moreover, the fire did not stop appellant from attempting payments by the due date, albeit unsuccessfully. Appellant also fails to show how the COVID-19 pandemic, staffing turnover, and lack of an allocation from the buyer affected its ability to make a successful payment. The fact that the payments were attempted counters the reasoning behind appellant's claim of reasonable cause.

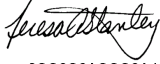
The remaining contention is that appellant did not receive the buyer's allocation until September 2022, and therefore, the late payment on September 15, 2022, was beyond their control. Appellant provides no evidence of its attempts to enforce its contract with the buyer that required the allocation to be completed by February 2, 2022. Additionally, appellant has not provided evidence of steps it took to ascertain the correct amount of its PTE tax payment by the March 15, 2022 deadline. The most important factor in determining whether a taxpayer acted with reasonable cause to abate the late-payment penalty is the extent of the taxpayer's efforts to ascertain its proper tax liability. (*Appeal of Moren, 2019-OTA-176P.*) Accordingly, appellant has not met its burden of proving reasonable cause.

HOLDING


Appellant has not established reasonable cause for abating the penalty.

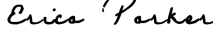
DISPOSITION

FTB’s action is sustained.

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Teresa A. Stanley
Administrative Law Judge

We concur:

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Josh Aldrich
Administrative Law Judge

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Erica Parker
Hearing Officer

Date Issued: 9/12/2024