

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
THE SMART GROUP INC)
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OTA Case No. 230814018

OPINION

Representing the Parties:

For Appellant: Farid H. Talab, CEO

For Respondent: Christopher M. Cook, Attorney

A. VASSIGH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, The Smart Group Inc (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$722.94 for the 2018 tax year.

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.05.) Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUES

1. Whether appellant has established that reasonable cause exists to abate the late payment penalty.
2. Whether appellant has established a basis to abate the underpayment of estimated tax penalty (estimated tax penalty).
3. Whether FTB properly imposed the collection cost recovery fee.
4. Whether appellant has established that a basis exists to abate interest.

FACTUAL FINDINGS

1. Appellant timely filed its 2018 tax return, reporting total tax of \$800, estimated tax payments of \$800, and no tax due. However, FTB's records did not reflect that FTB received any estimated tax payments from appellant during 2018.
2. On October 18, 2019, FTB mailed appellant a Corporation Past Due Notice, which informed appellant that the failure to pay the balance due by November 2, 2019, may result in the imposition of a collection cost recovery fee.
3. On October 31, 2022, FTB applied \$800 to appellant's 2018 account from a payment appellant remitted with its 2021 tax return.
4. FTB imposed a late payment penalty of \$200 (consisting of monthly penalties in the amount of \$160 and underpayment penalty in the amount of \$40), an estimated tax penalty of \$30.90, and a collection cost recovery penalty of \$355, plus interest.
5. FTB applied \$722.94 from a payment appellant made on February 22, 2023, to the remaining balance due.
6. Appellant subsequently filed a claim for refund of \$722.94.
7. FTB denied appellant's claim for refund, and this timely appeal followed.

DISCUSSION

Issue 1: Whether appellant has established that reasonable cause exists to abate the late payment penalty.

A late payment penalty is imposed when a taxpayer fails to pay the amount shown as due on the return on or before the date prescribed for payment of the tax. (R&TC, § 19132(a)(1)(A).) Generally, the date prescribed for payment of the tax is the due date of the return (without regard to any extension of time for filing the return). (R&TC, § 19001.) For corporate taxpayers, such as appellant, the filing due date of its return (without regard to any extension), and the date prescribed for payment of the tax, is the 15th day of the fourth month following the close of its taxable year. (R&TC, § 18601(a).)

Here, the date prescribed for the payment of tax for tax year 2018 was April 15, 2019. Because FTB applied a payment of \$800 to appellant's 2018 tax liability on October 31, 2022, FTB properly imposed the late payment penalty.

However, a late payment penalty will be abated if a taxpayer shows that the late payment was due to reasonable cause and not due to willful neglect. (R&TC, § 19132(a)(1).) Generally, to establish reasonable cause, the taxpayer must show that the failure to timely pay 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.*) Unsupported assertions are insufficient to satisfy the taxpayer’s burden of proof. (*Ibid.*)

On appeal, appellant contends that its late payment of tax was due to reasonable cause. Specifically, appellant’s CEO asserts that he probably forgot to pay the tax due to a family issue, and that he did not receive any notices about the missed payment from 2019 to 2023.¹ Appellant has not provided any documentation or explanation for why its CEO’s family issue prevented appellant from timely paying its tax payment. There is no evidence in the record demonstrating appellant was “unable [to make a tax payment] within the prescribed time.” (*U.S. v. Boyle* (1985) 469 U.S. 241, 246.) The exercise of ordinary business care and prudence would have necessitated a system in place to ensure that the taxes would be paid. Appellant’s 2018 taxes not being paid over three years later indicates a lack of oversight in this area. Appellant bears the burden of showing that reasonable cause existed for the late payment of its 2018 taxes, and unsupported assertions are not sufficient for appellant to carry that burden. (*Appeal of Moren*, *supra.*) OTA concludes that appellant has not established reasonable cause to abate the late payment penalty.

Appellant also asserts that it has paid its taxes timely for 22 years. However, California has no abatement program for the 2018 tax year based solely on a prior good payment history.²

Issue 2: Whether appellant has established a basis to abate the estimated tax penalty.

A corporation subject to the franchise tax must pay the estimated tax for each year on or before the 15th day of the fourth month, which may not be less than the minimum franchise tax. (R&TC, §§ 19023, 19025.) A corporation that underpays its estimated tax is liable for an

¹ Appellant also claims that it is entitled to a refund because its corporate status was suspended in 2023. The suspension of appellant’s corporate status occurred after the tax year at issue, however, and has no bearing on this appeal.

² R&TC section 19132.5(a), effective for taxable years beginning on or after January 1, 2022, allows an individual taxpayer to request a one-time abatement of a timeliness penalty. As it is the 2018 tax year at issue here, this newly enacted law is not applicable.

addition to tax (i.e., a penalty) equal to a specified rate of interest applied to the amount of the underpayment. (R&TC, §§ 19142, 19144.) Relief from the estimated tax penalty is not available based on a showing of reasonable cause. (*Appeal of Scanlon*, 2018-OTA-075P.) There are a few limited statutory exceptions to the estimated tax penalty.³ (R&TC, §§ 19147, 19148.)

Appellant's CEO requests abatement of the estimated tax penalty based on the same reasonable cause he asserts with respect to the late payment penalty. However, there is no general reasonable cause exception to the estimated tax penalty. Furthermore, appellant does not argue or provide evidence showing that the limited statutory exceptions to the penalty apply. Accordingly, there is no basis for abatement.

Issue 3: Whether FTB properly imposed the collection cost recovery fee.

R&TC section 19254(a)(1) requires FTB to impose a collection cost recovery fee when FTB notifies a taxpayer that the continued failure to pay an amount due may result in the imposition of the fee, and the taxpayer fails to timely pay the amount due in response to the notice. Once FTB properly imposes the fee, there is no language in the statute that would excuse the imposition of the fee for any reason, including reasonable cause. (See *Appeal of Auburn Old Town Gallery, LLC*, 2019-OTA-319P.)

Here, FTB mailed appellant a Corporation Past Due Notice on October 18, 2019, which informed appellant that the failure to pay the balance due by November 2, 2019, may result in the imposition of a collection cost recovery fee. Because appellant failed to pay the balance due by November 2, 2019, imposition of the collection cost recovery fee was required and properly imposed under R&TC section 19254(a)(1). OTA has no authority to abate or modify this fee. Therefore, OTA sustains FTB's imposition of the collection cost recovery fee.

Issue 4: Whether appellant has established that a basis exists to abate interest.

If any amount of tax is not paid by the due date, interest is required to be imposed from the due date until the date the taxes are paid. (R&TC, § 19101(a).) Interest is not a penalty but is compensation for the taxpayer's use of money that should have been paid to the state. (*Appeal*

³ Several exceptions to the imposition of the penalty are set forth in R&TC sections 19142(b), 19147, and 19148, but appellant does not allege, and the evidence does not show, that any of those exceptions apply to the facts here.

of Balch, 2018-OTA-159P.) Imposition of interest is mandatory, and it can only be abated in certain limited situations when authorized by law. (R&TC, § 19101(a); *Appeal of Balch, supra.*)


There is no reasonable cause exception to the imposition of interest. (*Appeal of Moy, 2019-OTA-057P.*) Rather, to obtain relief from interest, appellant must qualify under R&TC section 19104 (pertaining to unreasonable error or delay by FTB in the performance of a ministerial or managerial act) or 21012 (pertaining to reasonable reliance on the written advice of FTB). Appellant does not assert, and the evidence does not show that FTB committed any such error or delay. R&TC section 21012 is also not relevant here because FTB did not provide appellant with any written advice. Appellant is therefore not entitled to interest abatement.

HOLDINGS

1. Appellant has not established that reasonable cause exists to abate the late payment penalty.
2. Appellant has not established a basis to abate the estimated tax penalty.
3. FTB properly imposed the collection cost recovery fee.
4. Appellant has not established a basis to abate interest.

DISPOSITION

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

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Amanda Vassigh
Administrative Law Judge

Date Issued: 9/20/2024