

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 22039967
A UNIFORM COMPANY)
)
)
)
)

OPINION

Representing the Parties:

For Appellant: Mark Kusnier, Chief Operating Officer

For Respondent: Jeffrey Gates, Attorney
Brad Coutinho, Attorney Supervisor

For Office of Tax Appeals: Michelle Huh, Attorney

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, A Uniform Company (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$74,970.48¹ for the 2020 taxable year.

Office of Tax Appeals (OTA) Administrative Law Judges Teresa A. Stanley, Veronica I. Long, and Tommy Leung held an electronic hearing for this matter on June 20, 2024. At the conclusion of the hearing, the record was closed, and this matter was submitted for an opinion.

ISSUES

1. Whether the late payment penalty should be abated.
2. Whether the underpayment of estimated tax penalty (estimated tax penalty) should be abated.

¹ On appeal, appellant requested a claim for refund amount of \$75,211.20, but only provided the claim for refund denial for the late payment penalty of \$74,947.14. Respondent provided with its opening brief the claim for refund denial of the estimated tax penalty of \$23.34. However, the proper amount for the claim for refund is \$74,970.48, which is the total of the late payment penalty of \$74,947.14 and the estimated tax penalty of \$23.34.

FACTUAL FINDINGS

1. Appellant, whose business includes the sale of personal protective equipment (PPE), filed its 2020 California Corporation Franchise or Income tax return (Form 100) on October 15, 2021. Appellant reported total tax of \$881,731, no estimated tax payments, a self-assessed estimated tax penalty of \$20,175, and a total amount due of \$901,906. Appellant paid the total reported amount due on October 18, 2021.
2. Respondent processed appellant's Form 100 and imposed a late payment penalty of \$74,947.14, plus interest. Rather than accept appellant's reported estimated tax penalty of \$20,175, respondent imposed an estimated tax penalty of \$23.34.
3. On December 7, 2021, appellant paid the 2020 penalties, and filed refund claims therefor. Appellant did not dispute the calculation of the penalties; instead, it asserted there was reasonable cause for the lateness and requested a first-time abatement of the penalties because it had a delay in processing its 2020 tax return due to COVID-19, and it could not seek professional assistance due to California's mandatory stay-at-home order.
4. Respondent denied appellant's refund claims.

DISCUSSION

Issue 1: Whether the late payment penalty should be abated.

A late payment penalty is imposed when a taxpayer fails to pay the amount shown on the return by the date prescribed for the payment of tax. (R&TC, § 19132(a).) Generally, the date prescribed for the 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 a corporate taxpayer, such as appellant, the 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).)

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 due to willful neglect. (R&TC, § 19132(a)(1).) To establish reasonable cause for a late payment of tax, the taxpayer must show that the failure to make a timely payment occurred despite the exercise of ordinary business care and prudence. (*Appeal of Rougeau*, 2021-OTA-335P.) 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. (*Appeal of Moren*, 2019-OTA-176P.)

The law provides for a one-time abatement of a timeliness penalty for individual taxpayers who are subject to the personal income tax. (R&TC, § 19132.5(a).) The one-time abatement does not apply to corporate taxpayers, and the statute only applies to requests for abatement made for taxable years beginning on or after January 1, 2022. (See R&TC, § 19132.5(b), (f).) Although the IRS administers a program called "First Time Abate," in which the IRS may administratively abate the late payment penalty if taxpayers have timely filed returns and paid taxes due for the past three years, neither the California Legislature nor respondent has adopted a comparable program for corporate taxpayers for the 2020 taxable year.

Appellant asserts that reasonable cause exists to abate the late payment penalty. Appellant contends that the COVID-19 pandemic and California's mandatory stay-at-home order hindered its ability to seek professional assistance and thus delayed the processing of its 2020 return. Appellant further contends that, although respondent extended the state tax deadline to May 17, 2021, the stay-at-home order was not rescinded until June 11, 2021. Appellant further contends that the complexity of its return required appellant to seek outside assistance to prepare its 2020 return.

However, appellant has not shown that it sought technical advice from an outside consultant regarding the preparation of its 2020 Form 100 prior to its due date; in fact, during the hearing, appellant testified that it contacted a tax attorney in August 2021, more than three months after the due date of the 2020 Form 100. Moreover, appellant did not explain how the stay-at-home order kept it from making phone calls, and did not pay any 2020 taxes by the due date, even though it knew it had a spike in income due to increased PPE sales because of COVID-19; a reasonable person would have tried to call a tax professional and made some tax payments by the due date to minimize potential late payment penalties. Furthermore, appellant's difficulty in determining income with exactitude does not negate the requirement that appellant must make payments of tax based on a reasonably accurate estimate of its tax liability. (See *Appeal of Rougeau*, *supra*.) When a taxpayer asserts that it lacked the information necessary to make a reasonably accurate estimate of its tax liability, it must show the efforts made to acquire that information from the source that held it, and the difficulties in obtaining the necessary information that led to the delay in payment. (*Appeal of Moren*, *supra*.) The general rule that

unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof applies here. (*Ibid.*)

Although respondent extended the payment deadline for the 2020 taxable year to May 17, 2021, the extension did not apply to corporate taxpayers, such as appellant.² Appellant's due date for its payment of tax was April 15, 2021. When appellant failed to make a timely payment of its tax on April 15, 2021, respondent properly imposed the late payment penalty. Moreover, appellant does not qualify for the one-time abatement under R&TC section 19132.5, because it is a corporate taxpayer, and its request for abatement is for the 2020 taxable year.

Thus, appellant has not established reasonable cause for failing to make a timely payment of tax for the 2020 taxable year.

Issue 2: Whether the estimated tax penalty should be abated.

Corporations that are required to pay California franchise tax pursuant to the Corporation Tax Law must make estimated tax payments. (R&TC, §§ 19023, 19025(a).) When the amount of estimated tax exceeds the minimum franchise tax, then the amount is generally paid in specified installments. (R&TC, § 19025(b).) A corporation that underpays its estimated tax is liable for a penalty equal to a specified rate of interest applied to the amount of the underpayment. (R&TC, §§ 19142(a), 19144.) An estimated tax penalty is properly imposed where the taxpayer's installment payments are less than the amounts due at the end of the installment periods. (*Appeal of Bechtel, Inc.* (78-SBE-052) 1978 WL 3525.) There is no extenuating circumstance, reasonable cause, or lack of willful neglect exception for the estimated tax penalty. (*Appeal of Weaver Equipment Co.* (80-SBE-048) 1980 WL 4976.) There are a few limited statutory exceptions to the estimated tax penalty. (See R&TC, §§ 19147, 19148.)

Here, appellant does not dispute respondent's imposition or calculation of the revised estimated tax penalty of \$23.34. Rather, appellant argues that the penalty should be abated based on reasonable cause or under a first-time abatement, as described above. However, there is no reasonable cause exception to the estimated tax penalty. (See *Appeal of Scanlon*,

² Respondent's notice regarding the postponement of individual return filing and payment for the 2020 taxable year expressly states it only postponed due dates for individuals. Therefore, it did not postpone the due dates for business entities' returns, return payments, estimated tax payments, or annual fees and taxes for the 2020 taxable year. (<https://www.FTB.ca.gov/about-ftb/newsroom/news-releases/2021-03-state-tax-deadline-for-individuals-postponed-until-may-17-2021.html>.)


2018-OTA-075P.) Moreover, R&TC section 19132.5 does not apply to the estimated tax penalty, or to corporate taxpayers, or to penalties imposed for taxable years prior to 2022. Because appellant does not argue or provide evidence that one of the limited statutory exceptions to the estimated tax penalty applies, respondent properly imposed the estimated tax penalty, and appellant is not entitled to abatement of the penalty.

HOLDINGS

1. Appellant is not entitled to abatement of the late payment penalty.
2. Appellant is not entitled to abatement of the estimated tax penalty.


DISPOSITION

Respondent’s action is sustained.


DocuSigned by:

 0C90542BE88D4E7...

 Tommy Leung
 Administrative Law Judge

We concur:

DocuSigned by:

 0CC6C6ACCC6A44D...

 Teresa A. Stanley
 Administrative Law Judge

Signed by:

 32D46B0C49C949F...

 Veronica I. Long
 Administrative Law Judge

Date Issued: 9/24/2024