

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 230713843
CGUCPA LLP)
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OPINION

Representing the Parties:

For Appellant: Peggy Chen, CPA

For Respondent: Natasha S. Page, Attorney

For Office of Tax Appeals: Thomas Lo Grossman, Attorney

E. PARKER, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19324, CGUCPA LLP (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$4,344.15 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 shown reasonable cause to abate the late payment penalty.

FACTUAL FINDINGS

1. Appellant, classified as a limited liability partnership (LLP) for federal and California income tax purposes, timely filed a 2021 tax year return on August 8, 2022, within the extension period. On the return, appellant reported tax of \$800 and elected to pay a pass-through entity (PTE) tax of \$186,833, for a total tax of \$187,633. Appellant’s due date to pay the total tax was March 15, 2022.

2. Appellant made payments of \$120,000 on December 27, 2021, and \$800 on March 14, 2022, for the 2021 tax year. Appellant untimely paid the remaining balance of \$66,883 on June 13, 2022.
3. FTB accepted appellant's return as filed and imposed a late payment penalty, plus applicable interest, because appellant did not timely pay its PTE elective tax. Appellant paid the amount due of \$4,917.26 (consisting of a late payment penalty of \$4,344.15, plus interest of \$573.11) and filed a claim for refund for the penalty and interest.¹
4. FTB denied appellant's claim for refund and this timely appeal followed.

DISCUSSION

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. For tax years beginning on or after January 1, 2021, and before January 1, 2022, the PTE elective tax was due and payable on or before the due date of the original return. (R&TC, § 19904(a)(1).) For a calendar year LLP, the original due date to file a return is March 15, which is the 15th day of the third month following the close of its taxable year. (R&TC, § 18633.) Therefore, the late payment penalty applies for the year at issue if the PTE elective tax was not paid by March 15, 2022.²

Appellant does not dispute that it paid its tax liability late, and instead argues reasonable cause as grounds for abating the penalty. 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 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 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 not sufficient to satisfy a taxpayer's burden of proof. (*Ibid.*)

¹ On appeal, appellant has not provided any arguments or evidence regarding interest abatement. Thus, we do not address interest further.

² R&TC section 19904(a)(2) provides different due dates for payment of the PTE elective tax in the 2022 through 2025 tax years.

On appeal, appellant explains that due to the unexpected death of a family member on March 15, 2022, the partners in charge of making payments on behalf of appellant forgot to make a timely payment by March 15, 2022. After returning to their office a week later, the partners were busy conducting their regular business and again forgot to pay the tax until they prepared appellant's return in June 2022.

While illness or other personal difficulties may constitute reasonable cause, taxpayers must present credible and competent evidence that the circumstances surrounding the difficulties prevented them from complying with the law. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.) However, if difficulties simply cause the taxpayer to sacrifice the timeliness of one aspect of the taxpayer's affairs to pursue other aspects, the taxpayer must bear the consequences of that choice. (*Ibid.*; *Appeal of Head and Feliciano*, 2020-OTA-127P.) Appellant has failed to show how it exercised ordinary business care and prudence when it continued to conduct its normal business activities for almost three months while neglecting to pay the tax due. While the Office of Tax Appeals is sympathetic to the circumstances of appellant's partners, appellant has failed to show reasonable cause to abate the late payment penalty.

Appellant also points to its good tax compliance history to request abatement of the late payment penalty. However, California does not allow first-time abatement of the late payment penalty based on good tax compliance history. Thus, no relief is available on this basis.

HOLDING

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

DISPOSITION

FTB’s denial of appellant’s claim for refund is sustained.

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Erica Parker
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Erica Parker
Hearing Officer

We concur:

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Andrew Wong
Administrative Law Judge

DocuSigned by:
John O Johnson
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John O. Johnson
Administrative Law Judge

Date Issued: 10/1/2024