

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
)
WE EVOLVETOGETHER HOLDING CO)
LLC)
)
)

OPINION

Representing the Parties:

For Appellant: Harvey Schutzbank, CEO

For Respondent: Noel Garcia-Rosenblum, Attorney

E. PARKER, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19324, We Evolvetogether Holding Co LLC (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$10,575.22¹ 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 company (LLC) for federal and California income tax purposes, timely filed a 2021 tax year return on September 12, 2022, within the extension period.
2. Appellant made a payment of \$3,300 on March 15, 2022, and a payment of \$109,978 related to a pass-through entity (PTE) elective tax on September 14, 2022, for the 2021 tax year.

¹ FTB originally denied a claim for refund in the amount of \$10,575.22 for the 2021 tax year (\$3,343.34 (monthly penalty) + \$5,538.90 (underpayment penalty) + \$1,692.98 (interest)). During the appeal, FTB recomputed and reduced the monthly penalty to \$3,299.34 and the underpayment penalty to \$5,498.90.

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 \$10,575.22 (consisting of a \$3,343.34 monthly penalty and a \$5,538.90 underpayment penalty, plus interest of \$1,692.98) and filed a claim for refund for the penalties and interest.
4. FTB denied appellant's claim for refund and this timely appeal followed.²

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 without regard to any extension of time for filing the return.³ (R&TC, § 19904(a)(1).) For the 2021 tax year, the due date to file a return for a calendar-year LLC, such as appellant, was March 15, 2022. (See R&TC, § 18633.5(a).) Appellant does not dispute that the late payment penalty was properly imposed because it failed to pay its PTE elective tax by March 15, 2022. Appellant also does not dispute that the penalty was properly computed. Rather, appellant asserts reasonable cause exists to abate the late payment penalty.

The late payment penalty will be abated if the taxpayer shows 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 reason for missing the deadline must be such that an ordinarily intelligent and prudent businessperson would have acted similarly under the same circumstances. (*Ibid.*)

² On appeal, appellant specifically requests abatement of the monthly penalty only. However, for purposes of completeness, both the monthly and underpayment portions of the late payment penalty will be addressed.

³ R&TC section 19904(a)(2) provides different due dates for payment of the PTE elective tax for tax years 2022 through 2025, which are not at issue in this appeal.

Appellant argues it relied on its New York-based tax professional's advice regarding the due date of the PTE elective tax. However, appellant has not provided any evidence to support this assertion.

The United States Supreme Court has held that, under certain circumstances, taxpayers may establish reasonable cause when they reasonably rely on substantive advice of a tax professional. (*U.S. v. Boyle* (1985) 469 U.S. 241, 250 (*Boyle*); see also *Appeal of Summit Hosting LLC*, 2021-OTA-216P [applying *Boyle* to the California late payment penalty].) A taxpayer's reliance on a tax professional to take care of an administrative act, including paying a tax, generally does not constitute reasonable cause. (*Boyle, supra.*) Reliance on a tax professional cannot function as a substitute for compliance with an unambiguous statute. (*Ibid.*)

Here, appellant failed to pay the PTE elective tax by March 15, 2022, the unambiguous statutory due date. (See R&TC, § 19904(a)(1).) Even if appellant provided evidence of specific advice it received from its New York tax professional, such advice is not substantive advice that may establish reasonable cause because the due date of the PTE elective tax is unambiguous. (*Boyle, supra.*) As such, appellant has not established reasonable cause based on reliance on the substantive advice of a tax professional.

HOLDING

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

DISPOSITION

FTB’s action in denying appellant’s claim for refund is sustained.

DocuSigned by:
Erica Parker
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Erica Parker
Hearing Officer

We concur:

DocuSigned by:
Tommy Leung
0C90542BE88D4E7...
Tommy Leung
Administrative Law Judge

DocuSigned by:
Steven Kim
5DD7EF644397430...
Steven Kim
Administrative Law Judge

Date Issued: 10/8/2024