

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 230513274
SEA TURTLE, INC.)
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OPINION

Representing the Parties:

For Appellant: J. Fox, President

For Respondent: Nancy E. Parker, Attorney

For Office of Tax Appeals: William J. Stafford, Attorney

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Sea Turtle, Inc. (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$5,332.86¹ plus applicable interest, for the 2021 taxable year.

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

ISSUE

Has appellant demonstrated reasonable cause to abate the late-payment penalty?²

¹ Appellant’s appeal letter requests a refund of \$6,459.21. FTB denied appellant’s claim for refund in the amount of “\$5,332.86, plus any applicable interest.” It appears that appellant’s total also includes some amount of interest charged on the late payment itself.

² Appellant has made no separate argument with respect to interest applicable to the late payment penalty, and late payment of the pass-through entity elective tax, and OTA does not address it further.

FACTUAL FINDINGS

1. Appellant filed a timely 2021 California S Corporation Franchise or Income Tax Return, reporting the minimum franchise tax of \$800 and pass-through entity elective tax (PTE tax) of \$59,254.
2. Appellant made a timely minimum tax payment of \$800. On March 10, 2022, appellant made a payment of \$59,254 but incorrectly applied it to the S corporation tax instead of the PTE tax. Appellant stopped payment on the March 10, 2022 payment, and on March 11, 2022, appellant made a payment of \$59,254 and applied it to the PTE tax. City National Bank incorrectly set up the stop payment as a recurring cancellation rather than a one-time cancellation, resulting in both payments being dishonored.
3. FTB imposed a late-payment penalty, plus applicable interest, which appellant later paid in full along with the PTE tax on October 28, 2022.
4. Appellant filed a claim for refund for the 2021 taxable year, which FTB denied.
5. This timely appeal followed.

DISCUSSION

An S corporation must 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, § 18601(d)(1).) Generally, the date prescribed for the payment of the tax is the due date of the return (without regard to extensions of time for filing). (R&TC, § 19001.) For taxable years beginning on or after January 1, 2021, and before January 1, 2022, the PTE tax was also due and payable on or before the due date of the original return. (R&TC, § 19904(a)(1).)

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. 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.*)

A failure to timely pay tax due caused by an oversight does not, by itself, constitute reasonable cause. (*Appeal of Friedman*, 2018-OTA-077P.) Moreover, the United States Supreme Court has held that reliance on a tax professional to meet a tax deadline does not constitute reasonable cause, unless such reliance involves substantive matters of tax law, which is not present here. (*U.S. v. Boyle* (1985) 469 U.S. 241, 251-252.)

Here, it is undisputed that appellant failed to pay its California tax liability for the 2021 taxable year in a timely manner and that FTB properly imposed the late payment penalty. Appellant states that it attempted to make the PTE tax payment on March 10, 2022, but inadvertently failed to indicate that the payment was a PTE tax payment. Appellant asserts that it contacted its bank to place a stop payment and initiated a new payment the next day, on March 11, 2022. Appellant contends, however, that the second payment attempt was rejected by the bank because of a “bank error.” Appellant also contends that appellant’s bookkeeper failed to inform appellant that the second tax payment attempt was not processed, which appellant asserts caused a seven-month delay in payment to FTB.

Appellant has not demonstrated reasonable cause to abate the late payment penalty. Although appellant submitted evidence that the second stop payment was due to a bank error, appellant’s failure to confirm the status of the second payment attempt in a timely manner is evidence that appellant did not exercise ordinary business care and prudence. Further, although appellant contends that its bookkeeper failed to inform appellant that the second payment attempt had not been transmitted to FTB, every taxpayer has a personal, non-delegable duty to timely pay the amount due. (*Appeal of Summit Hosting LLC*, 2021-OTA-216P, citing *U.S. v. Boyle, supra*), and a taxpayer’s reliance on an agent to respond on the taxpayer’s behalf is not reasonable cause. (*U.S. v. Boyle, supra*). No evidence in the record suggests that appellant diligently checked its bank account to ensure that the payment was debited from its account. Failure to check a taxpayer’s bank account balance does not demonstrate due diligence. (*Appeal of Friedman, supra*.) Moreover, FTB’s Web Pay Confirmation instructs taxpayers “[t]o confirm your payment has been cleared, review your bank account statement or contact your bank.” Had appellant done so, it would have learned of its mistake long before October 2022. In short, appellant has not demonstrated reasonable cause to abate the late-payment penalty.

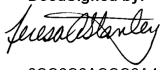
Appellant also contends that it has a history of making timely tax payments. It appears that appellant is seeking a first-time abatement of the late-payment penalty. While R&TC section 19132.5, effective for taxable years beginning on or after January 1, 2022, allows an individual taxpayer to request a one-time abatement of a timeliness penalty, that provision is not applicable to appellant, which is an S corporation.

HOLDING

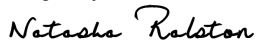
Appellant has not demonstrated that the late-payment penalty should be abated.


DISPOSITION

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

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Teresa A. Stanley
Administrative Law Judge

We concur:

Signed by:

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Natasha Ralston
Administrative Law Judge

Signed by:

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Seth Elsom
Hearing Officer

Date Issued: 10/9/2024