



### FACTUAL FINDINGS

1. On May 15, 2021, appellant made an estimated tax payment of \$800 for the 2021 tax year.
2. On December 30, 2021, appellant made a pass-through entity (PTE) elective tax payment of \$203,000.
3. On March 21, 2022, appellant untimely made an estimated tax payment of \$32,995 and a PTE elective tax payment of \$6,711.
4. On October 13, 2022, appellant untimely filed a California S Corporation Franchise or Income Tax Return (Form 100S) for the 2021 tax year. On the return, appellant reported tax of \$34,698, PTE elective tax of \$215,285, for a reported total tax of \$249,983. At that time, appellant had only made estimated tax payments of \$33,795 (\$800 + \$32,995) and PTE elective tax payments of \$209,711 (\$203,000 + \$6,711). As a result, appellant still owed \$903 in tax and \$5,574 in PTE elective tax at the time of filing. Appellant paid the balance late on the same day of untimely filing.
5. Respondent issued appellant a Return Information Notice imposing an estimated tax penalty of \$1.97, a late filing penalty of \$11,545.75,<sup>1</sup> and a per-shareholder late filing penalty of \$126, plus applicable interest.
6. Appellant paid the balance due of \$12,350.57 (three penalties totaling \$11,673.72 plus \$676.85 interest).
7. Appellant filed a claim for refund.
8. Respondent issued appellant a letter denying the claim for refund.
9. Appellant filed this timely appeal.

### DISCUSSION

#### Issue 1: Whether appellant has established reasonable cause to abate the late filing penalty.

R&TC section 19131 imposes a late filing penalty when a taxpayer fails to file a tax return on or before its due date, unless the taxpayer establishes that the late filing was due to reasonable cause and was not due to willful neglect. To establish reasonable cause, a taxpayer

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<sup>1</sup> The late filing penalty of \$11,545.75 was calculated based on the difference between the total amount owed, \$249,983 (\$34,698 tax + \$215,285 PTE elective tax), and the amount of tax paid by the March 15, 2021 due date, \$203,800, multiplied by the 25-percent penalty rate.

must show that the failure to timely file returns occurred despite the exercise of ordinary business care and prudence, or that cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) When respondent imposes a penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) The burden of proof is on the taxpayer to provide credible and competent evidence supporting a claim of reasonable cause. (*Ibid.*)

Here, appellant does not dispute that respondent properly imposed or computed the late filing penalty. Instead, appellant contends that its failure to timely file a tax return occurred despite the exercise of ordinary business care and prudence. Appellant asserts that it received an unexpectedly large gain from an investment in 2021, and that the late filing occurred because it did not receive its Schedule K-1 in time to timely file its tax return. Appellant asserts that, rather than file an inaccurate return and “guessing” the K-1 income, it delayed filing the tax return. Appellant states that it timely paid an “estimated” PTE elective tax of \$203,000 in December 2021, based on the actual distribution appellant received in December 2021. Appellant concedes that the additional tax of \$32,995 was paid a few days late, but asserts that it “fully intended to file the corporate tax return as soon as possible.” Appellant states that it paid over 97 percent of the total corporate taxes in advance, as it only owed an additional \$5,574 in PTE elective tax and \$903 in corporate tax upon filing its return.

Appellant may have intended to file as soon as possible upon receiving the Schedule K-1; however, in late filing penalty cases, “the law dictates that the appropriate path is to file a timely return and amend it later, if needed” because “[t]o hold otherwise would be to make the [late filing penalty] optional for any taxpayer” who claims to be waiting for additional tax information. (*Appeal of Xie, supra.*) Considering the facts here, an ordinarily intelligent and prudent businessperson would have filed a return based on the actual distribution received in December 2021, and later filed an amended return upon receiving the Schedule K-1. Appellant had the necessary information to make an estimated PTE elective tax payment in December 2021, and an additional tax payment on March 20, 2022, which ultimately represented over 97 percent of appellant’s reported total tax for 2021. Therefore, appellant has failed to establish reasonable cause to abate the late filing penalty.

Issue 2: Whether appellant has established reasonable cause to abate the per-shareholder late filing penalty.

R&TC section 19172.5 provides that a per-shareholder late filing penalty shall be imposed when an S corporation fails to file a tax return on or before the due date, unless it is shown that the failure is due to reasonable cause. Reasonable cause requires a showing that the taxpayer acted as an ordinarily intelligent and prudent businessperson would have acted under similar circumstances. (*Appeal of Quality Tax & Financial Services, Inc.*, 2018-OTA-130P.)

Here, appellant does not dispute that respondent properly imposed or computed the per-shareholder late filing penalty. However, appellant argues that there is reasonable cause to abate the penalty. As discussed above, appellant has not established that its failure to timely file its return was due to reasonable cause. Thus, appellant has failed to establish reasonable cause to abate the per-shareholder late filing penalty.

Issue 3: Whether appellant has established a basis to abate the underpayment of estimated tax penalty.

An S corporation that underpays its estimated tax is subject to an addition to tax equal to a specified rate of interest applied to the amount of the underpayment unless a statutory exception applies. (R&TC, §§ 19142, 19144.) There is no reasonable cause exception to the imposition of the estimated tax penalty, although a few limited statutory exceptions to the penalty exist.<sup>2</sup> (*Appeal of Weaver Equipment Co.* (80-SBE-048) 1980 WL 4976.)

Here, appellant argues there is reasonable cause to abate the estimated tax penalty. However, there is no reasonable cause exception to the estimated tax penalty. Appellant does not argue, and the evidence does not establish, that any of the statutory exceptions apply to this appeal. Therefore, appellant has failed to establish a basis to abate the estimated tax penalty.

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<sup>2</sup> For example, R&TC sections 19142(b), 19147, and 19148 provide for some exceptions to the imposition of the estimated tax penalty.

HOLDINGS


1. Appellant has not established reasonable cause to abate the late filing penalty.
2. Appellant has not established reasonable cause to abate the per-shareholder late filing penalty.
3. Appellant has not established a basis to abate the estimated tax penalty.


DISPOSITION

Respondent’s action denying appellant’s refund claim is sustained.

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 Steven Kim  
 Administrative Law Judge

We concur:

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1EAB86DA3324477...  
 Eddy Y.H. Lam  
 Administrative Law Judge

Signed by:  
  
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1B8F50433F1D4D5...  
 Greg Turner  
 Administrative Law Judge

Date Issued: 10/23/2024