

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
ODORZX, INC.) OTA Case No. 240215314
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OPINION

Representing the Parties:

For Appellant: Robert Bruce, CPA

For Respondent: Tristen Thalhuber, Attorney

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Odorzx Inc. (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$5,265.93¹ for the 2021 tax year.

Appellant waived the right to an oral hearing; therefore, the matter was submitted to the Office of Tax Appeals (OTA) on the written record pursuant to California Code of Regulations, title 18, section 30209(a).

ISSUES

1. Whether appellant has established reasonable cause to abate the late payment penalty for the 2021 tax year.
2. Whether appellant has established it is entitled to abatement of the Electronic Funds Transfer (EFT) penalty for the 2021 tax year.

FACTUAL FINDINGS

1. Appellant remitted an estimated tax payment for taxable year ending (TYE) December 31, 2021. On April 15, 2022, appellant remitted a payment of \$11,327 and a Pass-Through Entity (PTE) tax payment of \$75,190.

¹ Appellant’s reasonable cause form requested a refund of \$5,266.26, which is the sum of the late payment penalty of \$4,758.44, the EFT penalty of \$507.49, and the estimate tax penalty of \$0.33. FTB’s claim denial letter lists a claim denied of \$5,265.93, which excludes the \$0.33 estimated tax penalty. As appellant did not argue reasonable cause to abate the estimated tax penalty to FTB or upon appeal, OTA does not address it here.

2. On September 14, 2022, appellant filed its California S Corporation Franchise or Income Tax Return reporting its total tax liability of \$87,317. Because appellant's total tax liability exceeded the \$80,000 threshold established under R&TC section 19011(a)(2), appellant's obligation to remit electronic payments was triggered.
3. FTB issued a Corporation Past Due Notice, imposing a late payment penalty of \$4,758.44 and an estimated tax penalty of \$0.33. Appellant remitted payment in full via check on May 15, 2023. FTB then imposed an EFT penalty of \$507.49. Appellant remitted payment in full electronically and requested abatement of the late payment and EFT penalties.
4. FTB denied appellant's claim for refund of the late payment and EFT penalties.
5. Appellant filed this timely appeal.

DISCUSSION

Issue 1: Whether appellant has established reasonable cause to abate the late payment penalty for the 2021 tax year.

R&TC section 19132 imposes a late payment penalty when a taxpayer fails to pay the amount of tax shown as due on the return by the date prescribed for the payment of the tax. Generally, the date prescribed for the payment of the tax is the due date of the return (determined without regard to any extension of time for filing the return). (R&TC, § 19001.) As an S Corporation, for TYE 2021, appellant's return was due no later than March 15, 2022, and therefore, the payment of appellant's TYE 2021 tax liability was due no later than that same date. However, on April 15, 2022, appellant remitted a payment of \$11,327, one month late. Appellant does not dispute that its payment was late or that FTB properly calculated the late payment penalty amount. Therefore, the only issue is whether appellant has demonstrated reasonable cause for its failure to timely pay its required taxes in full.

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 Scanlon*, 2018-OTA-075P.) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Friedman*, 2018-OTA-077P.) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of Scanlon*, *supra*.)

Appellant asserts that the late payment was an oversight and that it relied on its tax preparation software system. Appellant has not made any specific arguments to establish its failure to pay on time was due to reasonable cause; rather, appellant contends that its attempt to comply with PTE tax payment requirements was due to its tax preparation software failing to inform appellant of appellant's electronic payment requirement.

Although appellant asserts that it relied on a tax software system, an oversight alone is not enough to demonstrate reasonable cause. (*Appeal of Friedman, supra.*) Appellant has not provided any other arguments or evidence to show it acted as an ordinarily intelligent and prudent businessperson in ensuring the tax payment was made on time. Based on the foregoing, OTA finds appellant has failed to demonstrate reasonable cause to abate the late payment penalties.

Issue 2: Whether appellant has established it is entitled to abatement of the EFT penalty for the 2021 tax year.

R&TC section 19011 requires any corporation that has filed an original return for taxable years on or after January 1, 1995, which reports taxable income in excess of \$80,000, must make all future payments of tax through electronic funds transfer. (R&TC, § 19011.) R&TC section 19011(c) provides that a taxpayer that does not comply with the EFT requirement shall pay a penalty of 10 percent of the amount paid, unless it is shown that the failure to make the payment as required was due to reasonable cause and was not the result of willful neglect.

Although R&TC section 19011 does not describe what circumstances will establish "reasonable cause" or a lack of "willful neglect," the same terms are used to describe the bases for relief of other penalties (e.g., the late filing and late payment penalties of R&TC sections 19131 and 19132, respectively), and it is appropriate to look to cases that discuss those penalties for guidance. (*Appeal of Porreca, 2018-OTA-095P.*) In order to demonstrate reasonable cause in the context of late filing penalties, a taxpayer must show the failure to file timely returns occurred despite the exercise of ordinary business care and prudence. (*Ibid.*) The taxpayer bears the burden of proving reasonable cause to excuse the penalty. (*Ibid.*) Furthermore, ignorance of the law does not excuse compliance with statutory requirements. (*Ibid.*)

Here, appellant filed its original TYE 2021 tax return on September 14, 2022, reporting a total tax liability of \$87,317, triggering the requirement that all its future payments be made electronically pursuant to R&TC section 19011(a)(2). Appellant remitted payment of \$5,074.94 via check on May 15, 2023. As a result, FTB correctly assessed the EFT penalty. Appellant

does not dispute the calculation or assessment of the EFT penalty, but instead makes a reasonable cause argument for the abatement of it.

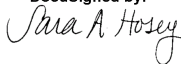
Appellant argues that its tax preparation software did not inform appellant it needed to make its payment electronically. Appellant’s reliance on tax preparation software does not establish reasonable cause when that information is inconsistent with the law or FTB instructions. (*Appeal of Porreca, supra.*) Even if appellant was unaware of the electronic payment requirement, ignorance of the law does not excuse compliance with the law. (*Ibid.*) Therefore, appellant has not established reasonable cause to abate the EFT penalty.

HOLDINGS


1. Appellant has not established reasonable cause to abate the late payment penalty for the 2021 tax year.
2. Appellant has not established it is entitled to abatement of the EFT penalty for the 2021 tax year.


DISPOSITION

FTB’s action is sustained.

DocuSigned by:

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 Sara A. Hosey
 Administrative Law Judge

We concur:

Signed by:

 C04CD432E3254ED
 Seth Elsom
 Hearing Officer

DocuSigned by:

 DC88A60D8C3E442
 Keith T. Long
 Administrative Law Judge

Date Issued: 11/8/2024