

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 230513367  
**SMC NETWORKS, INC.** )  
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**OPINION**

Representing the Parties:

For Appellant: Samuel Reynders

For Respondent: Eric R. Brown, Attorney

For Office of Tax Appeals: Neha Garner, Attorney

S. KIM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, SMC Networks, Inc. (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$16,602.88 for the 2020 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).

**ISSUE**

Whether appellant has established reasonable cause to abate the late payment penalty.

**FACTUAL FINDINGS**

1. On October 14, 2021, appellant made a payment of \$212,389. On October 15, 2021, appellant filed a 2020 California Corporation Franchise or Income Tax Return reporting total tax of \$212,394 and total payments of \$4,858, and a balance due of \$207,536.
2. FTB imposed penalties totaling \$19,999.09, including a \$16,602.88 late payment penalty and other penalties not at issue in this appeal. On November 18, 2022, appellant made a payment of \$19,999.09.
3. On December 8, 2022, appellant filed a claim for refund. On March 14, 2023, FTB denied the claim for refund.
4. Appellant timely filed the current appeal.

## DISCUSSION

R&TC section 19132 imposes a 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. In the case of a corporation, payment of the amount shown as due on the return must be made on or before the 15th day of the fourth month following the close of its taxable year (determined without regard to any extension of time for filing the return). (R&TC, §§ 18601(a), 19001.) For the 2020 tax year, the payment due date was April 15, 2021.

When FTB imposes a penalty, it is presumed that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) However, the late payment penalty may be abated if the taxpayers show that the failure to make a timely payment of tax was due to reasonable cause and was not due to willful neglect. (R&TC, § 19132(a)(1).) To establish reasonable cause, the taxpayer must demonstrate that its failure to timely pay the proper amount of tax 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 acted similarly under the same circumstances. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.) Generally, ignorance of the law is not reasonable cause for failure to comply with statutory requirements. (*Appeal of Porreca*, 2018-OTA-095P.) A taxpayer does not exercise ordinary business care and prudence when it fails to acquaint itself with the requirements of California tax law. (*Ibid.*) One does not have to be a tax expert to know that taxes must be paid when due. (*U.S. v. Boyle* (1985) 469 U.S. 241, 251 (*Boyle*); *Appeal of Auburn Old Town Gallery, LLC*, 2019-OTA-319P)<sup>1</sup>. Each taxpayer has a personal, non-delegable obligation to pay tax by the due date. (See *Baccei v. U.S.* (9th Cir. 2011) 632 F.3d 1140, 1148 [extending determinations that timely filing is a nondelegable duty to late payments of tax].)

To establish reasonable cause based on reliance on a tax advisor, a taxpayer must show that it reasonably relied on the tax advisor for substantive tax advice. (*Appeal of Summit Hosting LLC*, 2021-OTA-216P, citing *Boyle*, *supra*.) To establish that reasonable cause exists, a taxpayer must show that it reasonably relied on a tax professional for substantive tax advice as to whether a tax liability exists and that the following conditions are met: (1) the person relied on by the taxpayer is a tax professional with competency in the subject tax law; and (2) the tax

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<sup>1</sup> Since the issue of whether a taxpayer has demonstrated reasonable cause for failure to pay tax asks the same questions and weighs the same evidence as the inquiry of whether reasonable cause exists for failure to file a tax return, decisions analyzing whether reasonable cause existed for failure to timely file a tax return are persuasive authority for determining whether reasonable cause existed for the failure to timely pay the tax. (*Appeal of Triple Crown Baseball LLC*, *supra*.)

professional's advice is based on the taxpayer's full disclosure of relevant facts and documents. (See *Appeal of Summit Hosting LLC, supra.*)

Here, appellant does not dispute that FTB properly imposed or computed the late payment penalty. Appellant contends that its failure to timely pay tax was due to reasonable cause. Appellant argues that it relies on the expertise of its tax preparer, but that it "was not made aware" that California had suspended net operating loss (NOL) carryover deduction for the 2020 tax year. Appellant asserts that it intended to offset any income generated in California with substantial NOL carryovers, and thus it did not make any estimated tax payments for the 2020 tax year.

However, appellant has not shown that it reasonably relied on substantive advice from a tax professional. Appellant has not established that its tax preparer was a tax professional with competency in California tax law, and that the tax professional's advice was based on a full disclosure of relevant facts. (See *Appeal of Summit Hosting LLC, supra.*) Although appellant argues that its tax preparer did not advise appellant of the suspension of the NOL carryover deduction, appellant has not provided any evidence showing that it sought out substantive tax advice from its tax preparer. Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Scanlon, 2018-OTA-075P.*) Moreover, appellant has a non-delegable obligation to ensure timely payment of tax. (See *Baccei v. U.S., supra.*) Ignorance of the law does not constitute reasonable cause. (*Appeal of Porreca, supra.*) Accordingly, appellant has not established reasonable cause to abate the late payment penalty.

HOLDING

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

DISPOSITION

FTB's action denying appellant's claim for refund for the 2020 tax year is sustained.

DocuSigned by:

*Steven Kim*

Steven Kim

Administrative Law Judge

We concur:

DocuSigned by:

*Eddy Y. H. Lam*

Eddy Y.H. Lam

Administrative Law Judge

DocuSigned by:

*Huy "Mike" Le*

Huy "Mike" Le

Administrative Law Judge

Date Issued: 11/8/2024