

In the Matter of the Appeal of:) OTA Case No. 230413056
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SOCKEYE TRADING COMPANY INC.)
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¹ This amount includes a \$23.34 estimated tax penalty.

FACTUAL FINDINGS

1. Appellant filed its 2020 S corporation return on September 14, 2021, but made no estimated tax payments.
2. Appellant's CPA did not remit appellant's 2020 tax payment on time, and full payment was not made until June 16, 2022. Consequently, respondent imposed late payment and estimated tax penalties on appellant.
3. Appellant paid the penalties, and filed a refund claim therefor based on reasonable cause grounds, which respondent denied.
4. The parties do not dispute the computation of the late payment penalty.

DISCUSSION

Respondent's determination is presumed correct and the taxpayer has the burden of proving error. (*Appeal of GEF Operating Inc.*, 2020-OTA-057P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid.*) Respondent's determination must be upheld in the absence of credible, competent, and relevant evidence showing error in the determination. (*Ibid.*)

Issue 1: Whether the late payment penalty should be abated.

The late payment penalty may be abated where the failure to make a timely payment was due to reasonable cause and not willful neglect. (R&TC, § 19132(a)(1).) To establish reasonable cause, the taxpayer must show that the failure to timely pay occurred despite the exercise of ordinary business care and prudence. (*Appeal of Scanlon*, 2018-OTA-075P.) Unsupported assertions are insufficient to meet this burden. (*Ibid.*)

Here, appellant argues that its CPA failed to pay appellant's taxes on time due to COVID-19 complications and an ongoing initial public offering. Furthermore, appellant contends that this was an isolated incident and, citing to a non-precedential State Board of Equalization decision,² asserts that because it did all it could to make its tax payment by the deadline, reasonable cause exists.

However, the exercise of ordinary business care and prudence requires taxpayers to do more than simply make the necessary arrangements for a payment to be processed. (*Appeal of*

² *Appeal of Lamb* (Nov. 19, 2013) 2013 WL 8282883.

Scanlon, supra.) Specifically, reasonably prudent taxpayers are expected to monitor their bank accounts to verify that their remittance(s) were paid to respondent. (*Ibid.*) Furthermore, it is well settled that a taxpayer's reliance on an agent, such as an accountant, to file a return or pay tax by the due date is not reasonable cause because a taxpayer has a personal, non-delegable obligation to meet statutory deadlines. (See *U.S. v Boyle* (1985) 469 U.S. 241, 252; *Appeal of Quality Tax & Financial Services, Inc.*, 2018-OTA-130P.) Appellant also relies on *Appeal of Moren*, 2019-OTA-176P, for the proposition that it did all it could to pay its taxes timely and had no control over its CPA in making the actual remittance. However, unlike the taxpayer in *Moren*, appellant possessed all the information needed to compute and make its tax payment and, as *Scanlon* suggests, all that remained was the oversight of the execution of the tax payment, which appellant delegated to its CPA; it is precisely this delegation of responsibility to meet a statutory deadline that the *Boyle* Court rejected as qualifying for reasonable cause treatment.³ For these reasons, this panel concludes that reasonable cause was not established by appellant.⁴

Issue 2: Whether the estimated tax penalty should be abated.

An S corporation subject to the corporation tax imposed by Part 11 of the R&TC must file a declaration of estimated tax and pay the estimated tax for each year. (R&TC, §§ 19023 & 19025.) If the amount of estimated tax does not exceed the minimum amount specified in R&TC section 23153, the entire amount of the estimated tax shall be due and payable on or before the fifteenth day of the fourth month of the taxable year. (R&TC, § 19025(a).) An S corporation that underpays its estimated tax is penalized by 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, 19147, & 19148.) A penalty for the underpayment of estimated tax is properly imposed where the taxpayer's installment payments are less than the amounts due at the end of the installment periods. (*Appeal of Bechtel, Inc.* (78-SBE-052) 1978

³ 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*, 2019-OTA-025P.)

⁴ Appellant also contends that it was not notified about the missing tax payment while being examined by respondent for another matter. However, OTA has already concluded that lack of notice of a failed payment from respondent does not negate the taxpayer's duty to verify that a payment was successfully made. (See *Appeal of Scanlon, supra.*)

WL 3525.) There is no reasonable cause exception to the imposition of the underpayment of estimated tax penalty. (*Appeal of Weaver Equipment Co.* (80-SBE-048) 1980 WL 4976.)

Appellant has not specifically addressed the estimated tax penalty. Rather, appellant makes the same reasonable cause arguments with respect to the late payment penalty and the estimated tax penalty. To reiterate, there is no authority to abate the estimated tax penalty based solely on reasonable cause.⁵ (*Appeal of Scanlon, supra.*) Appellant has not provided argument and the evidence in the record does not establish a basis for abating the estimated tax penalty. Therefore, there is no need to discuss appellant's reasonable cause argument as it relates to this penalty, and the estimated tax penalty should not be abated.

Issue 3: Whether interest should be abated.

The imposition of interest is mandatory and accrues on a tax deficiency regardless of the reason for the underpayment. (R&TC, § 19101(a); *Appeal of Balch*, 2018-OTA-159P.) There is no reasonable cause exception to the imposition of interest. (*Appeal of Moy*, 2019-OTA-057P.) Therefore, to obtain interest relief appellant must qualify under R&TC section 19104 (pertaining to unreasonable error or delay by respondent in the performance of a ministerial or managerial act), 19112 (pertaining to extreme financial hardship caused by significant disability or other catastrophic circumstance), or 21012 (pertaining to reasonable reliance on the written advice of respondent). (*Ibid.*) Appellant did not allege, and the record does not reflect, that any of these waiver provisions are applicable here. Therefore, there is no basis for abating interest.


⁵ There are limited exceptions to imposition of the penalty, but appellant does not allege, and the evidence does not show, that any of those apply to the facts in this appeal. (R&TC, § 19142(b).)

HOLDINGS


1. The late payment penalty should not be abated.
2. The estimated tax penalty should not be abated.
3. Interest should not be abated.

DISPOSITION


Respondent's action is sustained.

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Tommy Leung
Administrative Law Judge

We concur:

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For
Eddy Y.H. Lam
Administrative Law Judge

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Suzanne B. Brown
Administrative Law Judge

Date Issued: 11/22/2024