

) OTA Case No. 230814207
)
)
)
)
)

¹ Appellant requested a refund in the amount of \$2,494.38. However, the Office of Tax Appeals determined that the correct amount is \$2,614.38, which includes a late payment penalty of \$2,589.05 and applicable interest of \$25.33.

3. On April 14, 2022, appellant filed a California S Corporation Franchise or Income Tax Return (Return) for the 2021 tax year. On that Return, appellant reported an income tax due of \$6,232, a PTE elective tax of \$38,640, and a total payment of \$67,500, resulting in an overpayment of \$22,628.
4. FTB processed the return and issued a Corporation Past Due Notice (Notice). In relevant parts, the Notice imposed a late payment penalty of \$2,589.05 and applicable interest of \$25.33.
5. Appellant remitted payment in full for the 2021 tax year and filed a claim for refund, seeking abatement of the late payment penalty and interest.
6. FTB denied appellant's claim for refund.
7. Appellant then filed this timely appeal.
8. On appeal, appellant provided a Schedule K-1 showing that the sole owner of its S Corporation is an individual. Appellant also submitted a verification letter and certificate from the hospital confirming the birth of the sole owner's child on March 16, 2022.

DISCUSSION

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

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. Tax is due on the original due date of the return without regard to the extension to file. (R&TC, §§ 19001, 18567(b).) The pass-through entity elective tax for the 2021 tax year is also due and payable on or before the due date of the original return without regard to any extension of time for filing the return.² (R&TC, § 19904(a)(1).) For the 2021 tax year, a S corporation is required to file its return on or before the 15th day of the third month following the close of its taxable year, or March 15, 2022. (R&TC, § 18601(d)(1).) When FTB imposes a penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) Here, appellants do not dispute that FTB properly imposed or computed the late payment penalty.

The late payment penalty may be abated if the taxpayer shows that the failure to make timely payments of tax was due to reasonable cause and was not due to willful neglect. (R&TC,

² The California Legislature enacted the Small Business Relief Act (R&TC, § 19900 et seq) to allow qualified pass-through entities to make an annual election to pay an entity-level tax which is offset by a tax credit at the shareholder or partner level for tax years beginning on or after January 1, 2021, and before January 1, 2026. (Assem. Bill No. 150 (2021-2022 Reg. Sess.) § 82, effective July 16, 2021.)

§ 19132(a)(1).) Here, FTB does not assert willful neglect. Therefore, the remaining issue regarding the late payment penalty is whether appellant has demonstrated reasonable cause for its failure to timely pay its required taxes in full.

To establish reasonable cause for the late payment of tax, a taxpayer must show that the failure to make timely payments of the proper amount of tax occurred despite the exercise of ordinary business care and prudence. (*Appeal of Friedman*, 2018-OTA-077P.) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid.*) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Scanlon*, 2018-OTA-075P.)

Appellant asserts that reasonable cause exists to abate the late payment penalty. Appellant, an S Corporation, contends that its sole owner attempted to make the payment on March 15, 2022, but was unaware the payment was unsuccessful. Appellant provided corroborating evidence that the sole owner was at the hospital on March 16, 2022, where the sole owner's spouse was giving birth. Appellant asserts that once it became aware that the March 15, 2022 payment had not been made, appellant promptly remitted the payment on March 17, 2022, just two days after the deadline, with one of those days spent by the sole owner at the hospital. Appellant also requests a one-time penalty abatement.³

The burden of proof is on appellant to support its assertions. Here, appellant has not provided sufficient details or documentation demonstrating that the March 15, 2022 payment was, in fact, attempted as claimed, rather than simply forgotten. For instance, there is no evidence of a software payment rejection or a printout from FTB Webpay showing that a payment was attempted on March 15, 2022. To reiterate, unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Scanlon, supra.*) Accordingly, appellant has not provided any evidence showing that appellant's failure to timely pay, in fact, occurred despite exercising ordinary business care and prudence.

Issue 2: Whether appellant has established a basis upon which interest can be abated.

R&TC section 19001 provides that taxes are due and payable as of the original due date of the taxpayer's return (without regard to extension). If tax is not paid by the original due date or if FTB assesses additional tax and that assessment becomes due and payable, the taxpayer is charged interest on the resulting balance due, compounded daily. (R&TC, § 19101.) Interest

³ R&TC section 19132.5, effective for tax years beginning on or after January 1, 2022, allows an individual taxpayer to request a one-time abatement of a timeliness penalty. Since the 2021 tax year is at issue in this appeal and appellant is not an individual, the one-time abatement provision does not apply and will not be addressed by OTA.


is not a penalty but is compensation for a taxpayer's use of money after it should have been paid to the state. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) There is no reasonable cause exception to the imposition of interest, and interest is mandatory except where abatement is authorized under the law. (*Appeal of Moy*, 2019-OTA-057P.) Generally, to obtain relief from interest, the taxpayer must qualify under one of the following three R&TC sections: 19104, 19112, or 21012. (*Ibid.*) OTA has no authority to review FTB's action under R&TC section 19112. (*Ibid.*) Under R&TC section 19104, FTB is authorized to abate interest if there has been an unreasonable error or delay in the performance of a ministerial or managerial act by an employee of FTB. Appellant does not assert FTB committed such errors or delays. R&TC section 21012 is also not relevant here because FTB did not provide appellant with any written advice. Accordingly, appellant is not entitled to interest abatement.

HOLDINGS

1. Appellant has not established reasonable cause to abate the late payment penalty.
2. Appellant has not established a basis upon which interest can be abated.

DISPOSITION

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

DocuSigned by:
 For
Eddy Y.H. Lam
Administrative Law Judge

Date Issued: 12/5/2024