

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

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| In the Matter of the Appeal of: |) | OTA Case No. 230613643 |
| |) | |
| TRONOX US HOLDINGS INC. & |) | |
| SUBSIDIARIES |) | |
| |) | |

OPINION

Representing the Parties:

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| For Appellant: | Douglas McElyea, Vice President, Tax |
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| For Respondent: | Camille Dixon, Attorney |
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| For Office of Tax Appeals: | Westley Marcelo, Attorney |
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T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Tronox US Holdings Inc. & Subsidiaries (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant's claim for refund of \$7,371.84, plus interest, for the 2020 taxable year.

Appellant waived its right to an oral hearing; therefore, this matter is being decided based on the written record.

ISSUES

1. Whether the late payment penalty should be abated.
2. Whether interest should be abated.

FACTUAL FINDINGS

1. Appellant remitted the balance due on its 2020 California Corporation Franchise or Income Tax Return (Form 100W) on October 15, 2021. Appellant reported an \$800 estimated tax payment and total amount due of \$92,148.
2. Consequently, Respondent issued a Notice of Balance Due to appellant, imposing a late payment penalty of \$7,371.84 plus interest, which appellant paid.

3. Appellant filed a claim for refund for the late payment penalty and interest, which respondent denied. Attached to the claim was Form 5806, Underpayment of Estimated Tax by Corporations. Appellant did not dispute the calculation of the late payment penalty.

DISCUSSION

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

A late payment penalty is imposed when a taxpayer fails to pay the tax shown on a return by the date prescribed for the payment of tax. (R&TC, section 19132 (a).) Generally, the date prescribed for the payment of the tax is the due date of the return (without regard to extensions of time for filing). (R&TC, § 19001.) The due date for appellant's payment of tax for the 2020 taxable year was April 15, 2021. (See R&TC, § 18601(a).)¹ Respondent imposed the late payment penalty because appellant did not remit payment until October 15, 2021. The penalty is presumed correct unless the taxpayer can demonstrate that the late payment resulted from reasonable cause and not willful neglect. (R&TC, § 19132; *Appeal of Xie*, 2018-OTA-076P.)

To establish reasonable cause, a taxpayer must show that the failure to make a timely payment occurred despite the exercise of ordinary business care and prudence. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P; *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 Moren*, 2019-OTA-176P.) The applicable standard of proof is by a preponderance of the evidence.² (Cal. Code Regs., tit. 18, § 30219(b).)

An asserted lack of documentation or difficulty in calculating a tax liability does not, by itself, constitute reasonable cause for a late payment of tax. (*Appeal of Rougeau*, 2021-OTA-335P.) A taxpayer's difficulty in determining income with exactitude does not negate the requirement that a taxpayer make payments of tax based upon a reasonably accurate estimate of tax liability. (*Ibid.*) If a taxpayer asserts that it does not have the information

¹ For the 2020 taxable year, respondent postponed the payment deadline for individual taxpayers to May 17, 2021, due to COVID-19. As relevant here, the postponement does not apply to corporations. (See FTB, *State Tax Deadline for Individuals Postponed until May 17, 2021*, news release (March 19, 2021) <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-03-state-tax-deadline-for-individuals-postponed-until-may-17-2021.html>].)

² A preponderance of evidence means that a party must establish by documentation or other evidence that the circumstances it asserts are more likely than not to be correct. (*Appeal of Belcher*, 2021-OTA-284P.)

necessary to make a reasonably accurate estimate of its tax liability, it must show the efforts made to acquire that information from the source that held it, and that difficulties in obtaining the necessary information led to the delay in payment. (*Appeal of Moren, supra.*)

As relevant to the late payment penalty,³ appellant contends that, while preparing its 2020 California state tax return, its allocable nonbusiness income was higher than expected. Appellant explains that the figure for allocable nonbusiness income listed on its tax return comes from sources outside the knowledge and control of the organization. The external parties responsible for the data submitted the information late, at which point it became apparent that appellant's California taxable income would exceed the \$1 million exception to the suspension of net operating loss carryovers. (See R&TC, § 24416.23(a), (c).)

Appellant appears to primarily argue that its late payment of tax was the consequence of a lack of documentation, or untimely provided information. But for the tardy submission of income data from outside sources, appellant would have recognized that the anticipated net operating loss carryover was in fact unavailable, and, therefore, correctly calculate and timely pay its tax liability. Critically, appellant does not provide any evidence or explanation as to why the external parties did not, or could not, furnish the required income data in a timely manner, and to the extent, if any, the 2020 income amounts varied from those from previous taxable years. Furthermore, appellant fails to describe what efforts it made, if any, to obtain the necessary information related to its allocable nonbusiness income from the external parties. Absent such evidence, appellant's sole contention that it lacked necessary information to timely calculate and pay its tax liability does not constitute reasonable cause to abate the late payment penalty.

Issue 2: Whether interest should be abated.

The imposition of interest is mandatory and cannot be waived based on reasonable cause. (R&TC, § 19101(a); *Appeal of Moy*, 2019-OTA-057P.) To obtain relief from interest, a taxpayer must qualify under the waiver provisions of R&TC section 19104 (pertaining to unreasonable

³ In its letter to respondent dated January 10, 2023, appellant noted that it reviewed the financial information in each quarter of 2020 to determine if any tax was due and to ensure that estimates would be timely filed. Appellant submitted Form 5806, Underpayment of Estimated Tax by Corporations, as supporting information for a reduction in penalty and interest. As noted by respondent, the penalty assessed against appellant concerns the late payment of tax for the 2020 taxable year, not an underpayment of estimated taxes. Thus, the scope of this appeal is limited to the matter of appellant's untimely paid tax.


error or delay by respondent in the performance of a ministerial or managerial act), section 19112 (pertaining to extreme financial hardship caused by significant disability or other catastrophic circumstance), or section 21012 (pertaining to reasonable reliance on the written advice of respondent). (*Appeal of Moy, supra.*) Appellant does not allege, and the record does not reflect, that any of the above waiver provisions are applicable here. Therefore, appellant has not established a basis to abate interest.

HOLDINGS

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

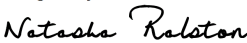
DISPOSITION

Respondent's action is sustained.

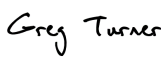
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Tommy Leung
Administrative Law Judge

We concur:

Signed by:

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Natasha Ralston
Administrative Law Judge

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Greg Turner
Administrative Law Judge

Date Issued: 11/19/2024