

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)	OTA Case No. 230613658
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TRAVIS INDUSTRIES, INC)	
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OPINION

Representing the Parties:

For Appellant:	Bradley Drake, Enrolled Agent
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For Respondent:	Christopher T. Tuttle, Attorney
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S. BROWN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Travis Industries, Inc (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant's claim for refund of \$14,249.01 for the 2021 tax year.¹

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

ISSUES

1. Whether appellant has established reasonable cause to abate the late payment penalty.
2. Whether appellant has established that the estimated tax penalty should be abated.
3. Whether appellant has established a basis to abate interest.

FACTUAL FINDINGS

1. On June 4, 2021, appellant remitted an estimated tax payment of \$7,713 and on September 7, 2021, appellant remitted an estimated tax payment of \$10,190. On

¹ This amount consists of a late payment penalty of \$13,647.37, estimated tax penalty of \$63.86, and applicable interest.

- March 28, 2022, appellant remitted a pass-through entity (PTE) elective tax payment of \$251,100. On April 13, 2022, appellant made an extension payment of \$35,000.²
2. On September 13, 2022, appellant filed its California S Corporation Franchise or Income Tax Return (Form 100S) for tax year 2021. Appellant reported total tax of \$282,094 consisting of tax of \$39,180 and a PTE elective tax of \$242,914. Appellant reported total payments of \$320,060, consisting of a prior year overpayment credit of \$16,057, estimated tax payments of \$17,903, an extension payment of \$35,000, and a PTE elective tax payment of \$251,100. Appellant reported an overpayment of \$37,966.
 3. On March 30, 2023, FTB issued a Notice of Balance Due that imposed a late payment penalty of \$13,647.37 and an estimated tax penalty of \$63.86, plus accrued interest.
 4. On April 4, 2023, appellant made a payment of \$14,249.01. On April 15, 2023, appellant filed a claim for refund in the amount of \$14,249.01. Appellant requested a “waiver of all penalties assessed for late payment of tax.” Appellant explained that it did not timely remit its tax payment because there were complications in creating an account with FTB to make its tax payment.
 5. On May 24, 2023, FTB denied the claim for refund in separate Claim for Refund Denied letters. One letter denied appellant’s claim for refund for the late payment penalty of \$13,647.37, plus any applicable interest. The second letter denied appellant’s refund claim for the estimated tax penalty of \$63.86, plus any applicable interest.
 6. Thereafter, appellant timely filed this appeal.

DISCUSSION

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

California imposes a penalty when a taxpayer fails to pay the amount of tax shown on a return on or before the due date, unless it is due to reasonable cause and not willful neglect.³ (R&TC, § 19132(a)(1).) The PTE 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

² It appears that appellant initially made this extension payment of \$35,000 on March 28, 2022, but that payment was dishonored.

³ The penalty is composed of two parts: (1) 5 percent of the tax which is unpaid by the due date; and (2) one-half of 1 percent of the outstanding balance for each month or fraction thereof, up to a maximum of 40 months. (R&TC, § 19132(a)(2)(A) & (B).)

return. (R&TC, § 19904(a)(1).) For the 2021 tax year, an “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.

(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.) To establish reasonable cause for the late payment penalty, the 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 Triple Crown Baseball LLC*, 2019-OTA-025P.) The standard is that an ordinarily intelligent and prudent businessperson would have acted similarly under the same circumstances. (*Ibid.*) Reasonable cause may be established when a taxpayer shows reasonable reliance on the advice of an accountant on substantive tax advice, such as whether a liability exists, even when such advice turned out to have been mistaken. (*U.S. v. Boyle* (1985) 469 U.S. 241, 250.) However, reliance on a tax professional for simple clerical duties does not constitute reasonable cause. (*Appeal of Mauritzson*, 2021-OTA-198P.) To establish reasonable reliance on substantive tax advice, the taxpayer must show that the taxpayer relied on a tax professional with competency in California tax law and the tax professional’s advice was based on the taxpayer’s full disclosure of relevant facts and documents. (*Appeal of Summit Hosting LLC*, 2021-OTA-216P.) Unsupported assertions are not sufficient to satisfy a taxpayer’s burden of proof. (*Appeal of Mauritzson, supra.*)

Here, FTB imposed a late payment penalty because appellant was required to remit \$282,094 by March 15, 2022, but appellant remitted only \$33,960 by that date. Appellant does not dispute the calculation of the late payment penalty. Instead, appellant argues there was reasonable cause for the late payment of tax because it relied on its CPA’s advice regarding the PTE elective tax and there were complications creating an account to remit its tax payment. However, appellant has not provided evidence to establish the steps it took to timely remit its tax payment, the complications the CPA encountered when making appellant’s tax payment, or the substantive tax advice on which appellant relied.

In addition, appellant states that its previous compliance history with FTB should be considered in granting its request. Although the Office of Tax Appeals (OTA) does not have a copy of appellant’s compliance history, submission thereof is not material to the analysis. There is nothing in the law that would allow OTA to abate this late payment penalty based on

appellant's compliance history.⁴ Consequently, appellant has not established reasonable cause to abate the late payment penalty.

Issue 2: Whether appellant has established that the estimated tax penalty should be abated.

An S corporation subject to the 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.) A corporation that underpays its estimated tax is liable for an addition to tax (i.e., a penalty) equal to a specified rate of interest applied to the amount of the underpayment. (R&TC, §§ 19142, 19144.) There is no reasonable cause exception to this penalty. (*Appeal of Weaver Equipment Co.* (80-SBE-048) 1980 WL 4976.) The estimated tax penalty is mandatory unless the taxpayer establishes that a statutory exception applies. (See R&TC, §§ 19147, 19148.)

Appellant does not dispute the calculation of the estimated tax penalty, but rather appellant makes the same “reasonable cause” argument as described above regarding the late payment penalty. However, there is no general reasonable cause exception to the estimated tax penalty, and there is no evidence or argument suggesting that any statutory exception would be applicable. Accordingly, appellant has not established that the estimated tax penalty should be abated.

Issue 3: Whether appellant has established a basis to abate interest.

If any amount of tax is not paid by the due date, interest is required to be imposed from the due date until the date the taxes are paid. (R&TC, § 19101(a).) Interest is not a penalty but is compensation for the taxpayer's use of money that 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. (*Ibid.*) To obtain relief from interest, a taxpayer must qualify under the waiver provisions of R&TC section 19104 (unreasonable error or delay), 19112 (extreme financial hardship), or 21012 (reasonable reliance on FTB's written advice).

On appeal, appellant does not identify or argue any grounds supporting abatement of interest. Therefore, appellant has not established any basis for interest abatement.

⁴ R&TC section 19132.5 authorizes first-time abatement of timeliness penalties for certain individual filers for tax years starting on and after January 1, 2022. This provision is inapplicable here because appellant is an S Corporation, not an individual, and the tax year at issue is the 2021 tax year.

HOLDINGS

1. Appellant has not established reasonable cause to abate the late payment penalty.
2. Appellant has not established that the estimated tax penalty should be abated.
3. Appellant has not established a basis to abate interest.

DISPOSITION

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

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Suzanne B. Brown

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Suzanne B. Brown
Administrative Law Judge

We concur:

Signed by:

Seth Elsom

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Seth Elsom
Hearing Officer

DocuSigned by:

Erica Parker

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Erica Parker
Hearing Officer

Date Issued: 12/30/2024