

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No. 240115125
ARROW WIRE & CABLE, INC.)	
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OPINION

Representing the Parties:

For Appellant:	Zahid Karim, Representative
For Respondent:	Paige Chang, Attorney

K. WILSON, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Arrow Wire & Cable, Inc. (appellant) appeals actions by respondent Franchise Tax Board (FTB) denying appellant's claims for refund of \$9,311.69 for the 2021 tax year.¹

Appellant waived the right to an oral hearing; therefore, Office of Tax Appeals decides this matter based on the written record pursuant to California Code of Regulations, title 18, section 30209(a).

ISSUES

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

FACTUAL FINDINGS

1. Appellant made the following estimated tax payments: (1) \$4,267 on April 28, 2021; (2) \$5,689 on June 15, 2021; and (3) \$4,267 on December 30, 2021.
2. Appellant filed its 2021 California S Corporation Franchise or Income Tax Return on April 5, 2022, reporting net income for tax purposes of \$1,500,604, tax of \$22,509, and pass-through entity (PTE) elective tax of \$159,264. After application of payments

¹ Appellant's appeal includes two claims for refund filed with FTB totaling \$9,311.69 (\$9,215.25 + \$96.44) which were denied by FTB in two separate claim denial notices.

totaling \$173,487, appellant reported franchise or income tax due of \$8,286, and penalties and/or interest of \$184. Appellant made two payments with the return: a PTE payment of \$159,264 and a return payment of \$8,470 (tax of \$8,286 + penalty and/or interest of \$184).²

3. On April 4, 2023, FTB issued appellant a Corporation Past Due Notice in the amount of \$9,607.55, which is the sum of tax, the late payment penalty, estimated tax penalty, and interest less payments made. FTB calculated and imposed an estimated tax penalty of \$96.45, since the April and December 2021 required estimated payments were not paid in full by the due dates (April 15 and December 15). FTB calculated and imposed a late payment penalty totaling \$9,215.25 comprised of a five percent underpayment penalty of \$8,377.50 (\$167,550³ underpayment × five percent) and a monthly penalty of \$837.75 (\$167,550 underpayment × one-half percent).
4. On June 26, 2023, FTB issued appellant a Corporation Final Notice Before Levy and Lien in the amount of \$9,707.83.⁴ Appellant subsequently paid the balance due in full.
5. On November 7, 2023, FTB received appellant's Reasonable Cause – Business Entity Claim for Refund in the amount of \$9,311.69.
6. FTB denied appellant's claims for refund and this timely appeal followed.

DISCUSSION

Issue 1: Whether appellant has established a basis to abate the estimated tax penalty.

Corporations that are required to pay California franchise or income tax pursuant to the Corporation Tax Law must make estimated tax payments. (R&TC, §§ 19023, 19025(a).) When the amount of estimated tax exceeds the minimum franchise tax, then the amount is generally paid in specified installments. (R&TC, § 19025(b).) A calendar year corporate taxpayer is required to make the following estimated tax payments: first quarter pay 30 percent of the tax due by April 15; second quarter pay 40 percent of the tax due by June 15; third quarter pay 0 percent of the tax due by September 15; and fourth quarter pay 30 percent of the tax due by

² The California Legislature enacted the Small Business Relief Act (R&TC, § 19900 et seq) to allow qualified PTEs 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.)

³ FTB calculated appellant's underpayment of tax of \$167,550 as follows: PTE elective tax of \$159,264 plus the reported franchise or income tax due of \$8,286. These amounts were due on March 15, 2022, but were not paid until April 5, 2022.

⁴ The increase of \$100.28 from the Corporation Past Due Notice is due to interest.

December 15. (R&TC, § 19025(b).) A corporation that underpays its estimated tax is liable for a penalty equal to a specified rate of interest applied to the amount of the underpayment. (R&TC, §§ 19142(a), 19144.) An estimated tax penalty 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 WL 3525.) There is no extenuating circumstance, reasonable cause, or lack of willful neglect exception for the estimated tax penalty. (*Appeal of Weaver Equipment Co.* (80-SBE-048) 1980 WL 4976.) There is no provision in the R&TC that allows the estimated tax penalty to be abated based solely on a finding of reasonable cause. As a result, there is no general reasonable cause exception to imposition of the estimated tax penalty. (*Appeal of Saltzman*, 2019-OTA-070P.)

Appellant contends that it made timely estimated tax payments but otherwise could not correctly calculate its estimated tax payments since it did not make the Assembly Bill (AB) 150 election for the PTE elective tax until the end of the tax year. The estimated tax payments are required for the tax imposed under Part 11 of the R&TC, and the PTE elective tax is not imposed by Part 11. As such, FTB calculated the required estimated tax payments based only on the reported tax of \$22,509, not appellant's reported PTE elective tax of \$159,264. Appellant made its first estimated tax payment of \$4,267 on April 28, 2021. The first quarter payment was made 13 days after the due date of April 15, 2021, and was underpaid by \$2,485.70. The second quarter payment was made timely on June 15, 2021, but was underpaid by \$3,314.60. Appellant made its fourth quarter payment of \$4,267 on December 30, 2021. The fourth quarter payment was made 15 days after the due date on December 15, 2021, and was underpaid by \$2,485.70. The underpaid amounts were paid late with the filing of appellant's tax return on April 5, 2022. FTB properly calculated and imposed the estimated tax penalty of \$96.44 since appellant's estimated tax payments on April 28, 2021, and December 15, 2021, which were due April 15 and December 15, respectively, were both untimely and underpaid, and appellant's estimated tax payment on June 15, 2021, was timely but underpaid.

Issue 2: Whether appellant has established reasonable cause to abate the late payment penalty.

An S corporation must file its return on or before the 15th day of the third month following the close of its taxable year, which is March 15 for tax years ending on December 31. (R&TC, § 18601(d)(1).) Additionally, an S corporation is required to pay the greater of a one and a half percent income or franchise tax or the minimum franchise tax. (R&TC, §§ 23802(b)(1), 23153.) 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.) For tax years beginning on or after January 1, 2021, and before January 1, 2022, the PTE elective tax was due and payable on or before the due date of the original return. (R&TC, § 19904(a)(1).) R&TC section 19132 imposes a late payment 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. The late payment penalty is comprised of an underpayment penalty equal to five percent of the unpaid tax and a monthly penalty equal to one-half percent of the unpaid tax for each month, or part of a month, the tax remains unpaid. (R&TC, § 19132.)

Appellant's tax and PTE elective tax were due on March 15, 2022. (R&TC, §§ 18601(d)(1), 19904(a)(1), 19001.) Appellant paid \$8,286 of its tax and all \$159,264 of its PTE elective tax on April 5, 2022, 21 days late. FTB properly calculated and imposed the late payment penalty, (including the underpayment and monthly portions of the penalty), since appellant paid the tax and PTE elective tax late. The late payment penalty will be abated if the taxpayer shows the failure to make a timely payment of tax was due to reasonable cause and not due to willful neglect. (R&TC, § 19132(a)(1).) To establish reasonable cause for the late payment of tax, a taxpayer must demonstrate 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 reason for missing the deadline must be such that an ordinarily intelligent and prudent businessperson would have acted similarly under the same circumstances. (*Ibid.*) Appellant contends there was reasonable cause for the late payment due to appellant's AB 150 election for the PTE elective tax which was not made until the end of the 2021 tax year; therefore, making the PTE elective tax unknown at the time payment was due. However, appellant has not shown why it could not make the March 15, 2022 payment deadline, which was two and a half months after the AB 150 PTE election was made at the end of the tax year (i.e., December 2021). As such, appellant has not established reasonable cause to abate the late payment penalty.

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 Balch*, 2018-OTA-159P.) Imposition of interest is mandatory, and it can only be abated in certain limited situations when authorized by law. (R&TC, § 19101(a); *Appeal of Balch*, *supra*.) There is no reasonable cause exception to the imposition of interest. (*Appeal of*

Moy, 2019-OTA-057P.) Rather, to obtain relief from interest, appellant must qualify under R&TC section 19104 (pertaining to unreasonable error or delay by FTB in the performance of a ministerial or managerial act) or R&TC section 21012 (pertaining to reasonable reliance on the written advice of FTB). Appellant does not assert, and the evidence does not show that FTB committed any such error or delay. R&TC section 21012 is also not relevant here because FTB did not provide appellant with any written advice. Appellant is therefore not entitled to interest abatement.

HOLDINGS

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

DISPOSITION

FTB's actions denying appellant's claims for refund are sustained.

Signed by:

Kim Wilson

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Kim Wilson
Hearing Officer

We concur:

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Michael F. Geary

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Michael F. Geary
Administrative Law Judge

Signed by:

Seth Elsom

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Seth Elsom
Hearing Officer

Date Issued: 3/12/2025