

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
LOVAS HOLDING, INC.) OTA Case No. 240315725
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)

OPINION

Representing the Parties:

For Appellant: Winston Lovas, Representative

For Respondent: Caitlin S. Russo, Senior Legal Analyst

M. GEARY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Lovas Holding, Inc. (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$542.82 for the 2021 tax year.

Appellant waived its right to an oral hearing and submitted the matter to the Office of Tax Appeals (OTA) on the written record pursuant to California Code of Regulations, title 18, section 30209(a).

ISSUES

1. Is appellant entitled to abatement of the late-payment penalty?
2. Is appellant entitled to abatement of the underpayment of estimated tax penalty (estimated tax penalty)?¹
3. Is appellant entitled to abatement of the collection cost recovery fee?
4. Is appellant entitled to relief of interest?

¹ As explained below, the law imposes an addition to tax when a taxpayer fails to pay estimated taxes timely. The “additions” are frequently referred to as penalties, as OTA does in this Opinion.

FACTUAL FINDINGS

1. Appellant filed a 2021 California S Corporation Income Tax Return (return) on April 8, 2022, reporting the \$800 minimum tax and self-assessed penalties and interest totaling \$22. Appellant had not made any estimated tax payments for the 2021 tax year, and it made no payment with its return.
2. Respondent processed appellant's return and, on August 24, 2022, issued² a Corporation Past Due Notice (past due notice), which informed appellant that a balance of \$896.78 was due for the 2021 tax year, and that to avoid interest and penalties, the amount due must be paid by September 8, 2022.
3. When appellant did not reply to the past due notice, respondent issued a Corporation Final Notice Before Levy and Lien (final notice 1) on September 30, 2022, by which time the penalties and interest due had increased, and the amount due was \$903.37. Final notice 1 informed appellant that no additional interest would accrue if it paid the entire amount due by October 15, 2022. It also informed appellant that a failure to timely pay the entire amount due would result in respondent taking collection action and could result in the imposition of a collection fee.
4. Appellant did not pay the amount due by October 15, 2022. On July 24, 2023, respondent issue a Business Entity Final Noice Before Levy (final notice 2). By this time, the penalties and interest had increased, and respondent added a collection cost recovery fee of \$307, bringing the total amount due to \$1,283.32. Final notice 2 instructed appellant to pay the entire amount due by August 2, 2023, to avoid additional interest and penalties.
5. Appellant again did not pay the amount due, and on September 7, 2023, respondent issued another Business Entity Final Noice Before Levy (final notice 3), which informed appellant that the balance due for the 2021 tax year was then \$1,295.19 and instructed appellant to pay the entire amount due by September 22, 2023, to avoid additional interest and penalties.
6. After appellant failed to pay the amount due, respondent issued a Final Notice Before Suspension or Forfeiture (final notice 4) on January 3, 2024. The notice informed appellant that the balance due was then \$1,332.16, that appellant was scheduled for suspension or forfeiture on April 2, 2024, and that appellant could avoid additional interest and penalties if it paid the balance due by January 18, 2024.

² All notices referred to in this Opinion as "issued" were issued to appellant.

7. Appellant paid \$1,342.63 on February 9, 2024.³
8. On February 23, 2024, appellant submitted its claim for refund of \$542.82, apparently representing the amount paid less the \$800 in tax.
9. On February 27, 2024, respondent denied the claim.
10. This timely appeal followed.

DISCUSSION

Issue 1: Is appellant entitled to abatement of the late-payment penalty?

Appellant's return and payment for the 2021 tax year was due by March 15, 2022. (R&TC, §§18601(d)(1) & 19001.) It is undisputed that appellant was required to pay the minimum tax of \$800 by that date. It did not pay the tax until almost two years later.

The law requires respondent to impose a penalty when a taxpayer fails to timely pay an amount shown as tax on the return unless the taxpayer shows that the failure was due to reasonable cause and not due to willful neglect. (R&TC, §19132(a)(1)(A).) There appears to be no dispute that appellant did not pay the tax by the due date and that respondent correctly calculated the late-payment penalty.

A late-payment penalty may be abated if the taxpayer shows that its failure to timely pay was due to reasonable cause and not due to willful neglect. (R&TC, §19132(a)(1).) To establish reasonable cause for a late payment of tax, a taxpayer must show that the failure to make a timely payment occurred despite the exercise of ordinary business care and prudence. (R&TC, § 19132(a)(1); *Appeal of Rougeau*, 2021-OTA-335P.) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.) This is an objective standard,⁴ meaning that the taxpayer's sincere belief that they are following the law is not determinative. (See *Appeal of Cremel and Koepfel*, 2021-OTA-222P.)⁵ Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of Porreca*, 2018-

³ Appellant's 2021 ledger with respondent shows tax, penalties, fees, and interest totaling \$1,342.82 and "Total Unapplied Credits" of \$0.19 (\$1,342.82 - \$0.19 = \$1,342.63).

⁴ See *U.S. v. Boyle* (1985) 469 U.S. 241, 248 fn. 6, cited with approval in *Conklin Bros. of Santa Rosa, Inc. v. United States* (9th Cir. 1993) 986 F.2d 315, 318.)

⁵ 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.)

OTA-095P.) When respondent imposes a penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.)

Appellant argues, without supporting evidence, that its failure to pay the tax due timely was the result of an oversight during a period of transition between accountants and tax preparers. Appellant also argues that it is eligible for a “first-time penalty abatement.”

Appellant has provided no persuasive explanation for its failure to pay the tax by the due date. Its statement that the failure was due to an “oversight” sheds no light on the issue, and there is no evidence in OTA’s record to support appellant’s contention that it exercised ordinary business care and prudence to pay its taxes by the due date. Therefore, OTA finds that appellant has not shown that its failure to timely pay was due to reasonable cause and not due to willful neglect.

Regarding appellant’s request for a first-time penalty abatement, the IRS has an administrative program called “First Time Abate,” under which it will abate timeliness penalties if a taxpayer has timely filed returns and paid tax for the past three years. The California Legislature adopted a comparable penalty abatement program, but it is available to individual taxpayers only and only for tax years beginning January 1, 2022, or later. On these bases, OTA finds that appellant is not entitled to abatement of the late-payment penalty.

Issue 2: Is appellant entitled to abatement of the estimated tax penalty?

When a corporation, including an S corporation, is required to pay the minimum tax specified in R&TC section 23153, that tax must be paid in full by the fifteenth day of the fourth month of the tax year, or in this case, by April 15, 2021. (R&TC, §§ 19023 & 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.) Although there are limitations to the application of the penalty under certain circumstances (see R&TC, §§ 19147 et seq.), appellant makes a reasonable cause argument, and there is no reasonable cause exception to the imposition of the underpayment of estimated tax penalty. (*Appeal of Weaver Equipment Company* (80-SBE-048) 1980 WL 4976.) Therefore, OTA rejects appellant’s reasonable cause argument and finds that appellant is not entitled to abatement of the estimated tax penalty.

Issue 3: Is appellant entitled to abatement of the collection cost recovery fee?

R&TC section 19254 requires respondent to impose collection cost recovery fees and filing enforcement cost recovery fees. That statute directs respondent to impose a collection cost recovery fee when it notifies a taxpayer that the continued failure to pay an amount due

may result in collection action, including imposition of the fee, and the taxpayer fails to timely pay the amount when due. (R&TC, § 19254(a)(1).) The amount of the fees is set annually to reflect actual collection and enforcement costs. (R&TC, § 19254(b).) The statute does not allow for abatement of or relief from these fees, even on a showing that the failure to pay was due to reasonable cause. (*Appeal of Auburn Old Town Gallery, LLC*, 2019-OTA-319P.) Here, appellant does not contest the proper imposition of the collection cost recovery fee and evidence in the record does not show that it was improperly imposed.⁶ Instead, appellant presents the same reasonable cause argument as that used for abatement of the late-payment penalty. On this basis, OTA rejects appellant's reasonable cause argument and finds that appellant is not entitled to abatement of the collection cost recovery fee.

Issue 4: Is appellant entitled to relief of interest?

If any amount of tax is not paid by the due date, respondent is required to impose interest from the payment 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.) Imposition of interest is mandatory, and it can only be abated in certain limited situations when authorized by law.⁷ (R&TC, § 19101(a); *Appeal of GEF Operating, Inc.*, *supra.*) Here, appellant presents the same reasonable cause argument, but there is no reasonable cause exception to the imposition of interest. (*Appeal of GEF Operating, Inc.*, *supra.*) Consequently, OTA rejects appellant's reasonable cause argument and finds that appellant is not entitled to relief of interest.

⁶ Respondent notified appellant in final notice 1 that it could incur a collection fee if appellant did not pay the balance due by the prescribed date. Since appellant did not pay the entire balance by the specified date in final notice 1, respondent properly applied the collection cost recovery fee.


⁷ Circumstances that warrant relief of interest are described in R&TC sections 19104 (unreasonable error or delay by respondent) and 21012 (reasonable reliance on respondent's written advice). Neither ground is asserted or shown by the evidence here.

HOLDINGS

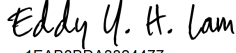
1. Appellant is not entitled to abatement of the late-payment penalty.
2. Appellant is not entitled to abatement of the estimated tax penalty.
3. Appellant is not entitled to abatement of the collection cost recovery fee.
4. Appellant is not entitled to relief of interest.


DISPOSITION

Respondent's action denying appellant's claim for refund of \$542.82 for the 2021 tax year is sustained.

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 Michael F. Geary
 Administrative Law Judge

We concur:

DocuSigned by:

 1EAD8DDA3324477...
 Eddy Y.H. Lam
 Administrative Law Judge

DocuSigned by:

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 Kenneth Gast
 Administrative Law Judge

Date Issued: 2/26/2025