

In the Matter of the Appeal of:) OTA Case No. 231114754
 RAYAH RACHEL LEVY INTERNATIONAL, INC.,)
 dba ArtéQuesta)
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1. On March 10, 2021, appellant timely filed its California S Corporation Franchise or Income Tax Return for the 2020 tax year. Appellant reported that on December 24, 2007, it incorporated in California and began doing business in California. Appellant reported that its taxable year began on January 1, 2020, and ended on December 31, 2020. Appellant reported that it owed the \$800 minimum franchise tax

and \$23 of penalties and interest. Appellant did not remit a tax payment with its tax return.

2. On March 10, 2021, appellant filed a Certificate of Dissolution with the California Secretary of State (SOS).
3. Subsequently, FTB processed appellant's tax return and imposed a \$144 late payment penalty, a \$322 collection cost recovery fee (CCRF), a \$23.34 estimated tax penalty, plus interest.
4. On May 11, 2023, appellant paid \$1,350.
5. On July 1, 2024, appellant filed a claim for refund for \$1,350.
6. On August 15, 2023, FTB denied appellant's claim for refund.
7. Thereafter, appellant timely filed this appeal.¹

DISCUSSION

Issue 1: Whether appellant is subject to the minimum franchise tax for the 2020 tax year.

Taxpayers have the burden of proof in an action for refund. (*Appeal of Li*, 2020-OTA-095P.) Taxpayers must prove that FTB's determination of the taxpayer's tax liability is not correct and the correct amount of tax owed. (*Ibid.*)

Unless expressly exempted by California's Corporation Tax Law or the California Constitution, every corporation that is incorporated under the laws of California, every corporation that is qualified to transact intrastate business in California, and every corporation doing business in California shall be subject to the minimum franchise tax of \$800 from the earlier of the date of incorporation, qualification, or commencing to do business within California, until the effective date of dissolution or withdrawal as provided in R&TC section 23331 or, if later, the date when the corporation ceases to do business within the limits of California. (R&TC, § 23153(a), (b), (d).) A corporation shall not be subject to the annual minimum franchise tax of \$800 if the corporation did no business in California during the taxable year and the taxable year was 15 days or less. (R&TC, § 23114(a).)

¹ Appellant requests a refund of the "annual fee" or for this "fee to be waived." OTA makes the reasonable inference that the "annual fee" or "fee to be waived" is the minimum franchise tax, discussed below. The amount indicated on appellant's July 1, 2024 claim for refund, however, includes amounts for the minimum franchise tax, penalties, fees, and interest. To the extent that appellant's argument may be applicable to a penalty or interest, OTA discusses them further. Nevertheless, since appellant makes no specific argument regarding the imposition or calculation of the CCRF, OTA does not discuss it further.

Here, appellant began doing business in California on December 24, 2007, and filed a Certificate of Dissolution with the California SOS on March 10, 2021. Accordingly, appellant is subject to the minimum franchise tax for the 2020 tax year.

Appellant argues that the annual minimum franchise tax should be waived because it did not operate in 2020 and suffered financial hardships from 2020 to 2022. However, there is no statutory exception to the annual minimum franchise tax due to financial hardships or lack of operations. Appellant is not entitled to a refund of the annual minimum franchise tax of \$800 for the 2020 tax year because it did not file its certificate of dissolution until March 10, 2021. In addition, appellant does not qualify for the exception to the annual minimum franchise tax under R&TC section 23114(a) because appellant reported on its 2020 return that its 2020 tax year began on January 1, 2020, and ended on December 31, 2020, which is more than 15 days.

Therefore, appellant is subject to the annual minimum franchise tax of \$800 for the 2020 tax year.

Issue 2: Whether appellant is entitled to the abatement of the late payment penalty.

California imposes a 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. (R&TC, § 19132.) 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.) When respondent imposes a penalty, the law presumes that the penalty was imposed correctly, and the burden of proof is on the taxpayer to establish otherwise. (*Appeal of Xie*, 2018-OTA-076P.) To overcome the presumption of correctness attached to the penalty, a taxpayer must provide credible and competent evidence supporting a claim of reasonable cause; otherwise, the penalty cannot be abated. (*Ibid.*)

The late payment penalty may be abated if the taxpayer shows that the failure to make a timely payment of tax was due to reasonable cause and was 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. (*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 Triple Crown Baseball*, 2019-OTA-025P (*Triple Crown Baseball*)).) As to appellant's burden, the applicable standard of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(b).) To meet this evidentiary standard, 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.)

Notably, illness may establish reasonable cause where the taxpayer presents credible and competent proof that the circumstances of the illness prevented the taxpayer from complying with the law. (*Triple Crown Baseball*, *supra*.) Moreover, inability to pay the tax due to financial hardship may also establish reasonable cause to abate the late payment penalty. (*Ibid.*) However, if the difficulties simply caused the taxpayer to sacrifice the timeliness of one aspect of its affairs to pursue other aspects, the taxpayer must bear the consequences of that choice. (*Appeal of Head and Feliciano*, 2020-OTA-127P.)

Appellant claims that it suffered a financial hardship that rendered it unable to pay the tax due based on the economic impact of COVID-19 (e.g., pending sales were not completed). Appellant also claims that it received no government assistance, and its president had a baby in April 2020 which caused further financial hardship. Appellant explains that it tried to revive the business from 2020 to 2022, but it was unsuccessful. In sum, appellant claims that it did not have the funds to pay because it did not make any income at all.

Although it is widely accepted that COVID-19 had a negative economic impact, appellant has not shown how its specific business was impacted (e.g., cancelled orders, returns, bank records). In sum, appellant has not provided documentation or other evidence that the circumstances it asserts are more likely than not to be correct. Further, appellant has not shown that it acted as an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. Accordingly, appellant is not entitled to abatement of the late payment penalty.

Issue 3: Whether appellant is entitled to the abatement of the estimated tax penalty.

As discussed above, appellant is subject to the annual minimum franchise tax for the 2020 tax year. Corporate taxpayers must pay at least the entire amount of the minimum franchise tax as an estimated tax payment on or before the fifteenth day of the fourth month of the taxable year. (R&TC, §§ 19023, 19025.) A corporation that underpays its estimated tax is liable for an addition to tax, which is treated and often referred to as a penalty, equal to a specified rate of interest applied to the amount of the underpayment. (R&TC, §§ 19142, 19144.) Relief from the estimated tax penalty is not available upon a showing of reasonable cause,

although limited statutory exceptions to the penalty exist.² (*Appeal of Scanlon*, 2018-OTA-075P; see R&TC, §§ 19142(b), 19147, 19148.)

Appellant does not dispute the imposition or the calculation of the estimated tax penalty and instead requests abatement of it based on reasonable cause arguments (e.g., the impact of COVID-19 on the business, appellant's president having a baby, and not conducting business activities). There is no reasonable cause exception to the imposition of the estimated tax penalty. (*Appeal of Scanlon*, *supra*.) Appellant does not argue that the narrow statutory exceptions to the estimated tax penalty apply, and as a result, OTA does not address them here. (See R&TC, §§ 19142(b), 19147, 19148.)

Issue 4: Whether appellant is entitled to the abatement of interest.

If any amount of the 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 which 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.) To obtain relief from interest, appellant must qualify under R&TC section 19104, 19112, or 21012;³ however, based on the evidence and appellant's arguments, none of these statutory provisions apply. Thus, appellant has not established any basis for interest abatement for the tax year at issue.

² For example, several exceptions to the imposition of the penalty are found in R&TC sections 19142(b), 19147, and 19148, but appellant does not allege, and the evidence does not show, that any of those exceptions apply to the facts here.

³ Note that R&TC section 19112 also provides relief from interest for individuals or fiduciaries that demonstrate an inability to pay interest solely because of extreme financial hardship caused by significant disability or other catastrophic circumstance. Appellant is a C-Corporation rather than an individual or fiduciary, and OTA does not have jurisdiction over respondent's denial of interest abatement pursuant to R&TC section 19112. (*Appeal of Moy*, *supra*.)

HOLDINGS

1. Appellant is subject to the annual minimum franchise tax for the 2020 tax year.
2. Appellant is not entitled to the abatement of the late payment penalty.
3. Appellant is not entitled to the abatement of the estimated tax penalty.
4. Appellant is not entitled to the abatement of interest.

DISPOSITION

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

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Josh Aldrich
Administrative Law Judge

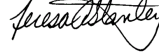
We concur:

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Lauren Katagihara
Administrative Law Judge

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Teresa A. Stanley
Administrative Law Judge

Date Issued: 3/7/2025