

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 230814076  
RAEMUND GALANG, DMD, INC. )  
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**OPINION**

Representing the Parties:

For Appellant: Dora D. Edgar, CPA

For Respondent: Vivian Ho, Attorney

S. KIM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Raemund Galang, DMD, Inc. (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant's claim for refund of \$18,129.77 for the 2021 tax year.<sup>1</sup>

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

**ISSUES<sup>2</sup>**

1. Whether appellant has established reasonable cause to abate the late filing penalty.
2. Whether appellant has established reasonable cause to abate the per-shareholder late filing penalty.

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<sup>1</sup> Appellant's claim for refund stated a refund amount of \$18,129.77, consisting of a late filing penalty of \$17,518.50, a per-shareholder late filing penalty of \$108, and applicable interest. However, respondent's denial letter indicated a claim amount of \$18,193, which appears to be a typographical error.

<sup>2</sup> Although the amount in dispute includes interest, appellant does not present any specific arguments related to interest abatement. Therefore, OTA does not address interest abatement.

### FACTUAL FINDINGS

1. On August 24, 2021, respondent issued appellant a Corporation Past Due Notice showing a balance due of \$250 because appellant failed to timely file a Statement of Information (SOI) with the California Secretary of State (SOS). On September 8, 2021, appellant paid the \$250 balance due but did not file an updated SOI.<sup>3</sup>
2. On January 25, 2022, appellant's corporate status was suspended because appellant failed to timely file an SOI with the SOS.<sup>4</sup>
3. On March 24, 2022, appellant made a pass-through entity (PTE) elective tax payment of \$73,111. The same day, appellant filed an SOI and a certificate of revivor with the SOS.
4. On September 14, 2022, appellant filed a 2021 California S Corporation Franchise or Income Tax Return (Form 100S).
5. Subsequently, respondent issued appellant a Notice of Balance Due showing a late filing penalty of \$17,518.50, a per-shareholder late filing penalty of \$108, and applicable interest.
6. Appellant made a payment of \$18,129.77, satisfying the balance due. Then, appellant timely filed a claim for refund for \$18,129.77.
7. Respondent denied the claim for refund.
8. Appellant timely filed this appeal.<sup>5</sup>

### DISCUSSION

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

R&TC section 19131 imposes a late filing penalty when a taxpayer fails to file a tax return on or before its due date, unless the taxpayer establishes that the late filing was due to reasonable cause and was not due to willful neglect. To establish reasonable cause, a taxpayer

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<sup>3</sup> Appellant filed its articles of incorporation on June 18, 2009. Every corporation shall file an SOI within 90 days after the filing of its articles of incorporation and annually thereafter during the applicable filing period. (Corp. Code, § 1502.) Upon the failure of a corporation to file an SOI, the SOS will provide a notice of the delinquency to the corporation. (Corp. Code, § 2204(a).) If the corporation does not file an SOI within 60 days of the notice, the SOS will certify the name of the corporation to respondent. (*Ibid.*) Upon certification by the SOS pursuant to Corporations Code section 2204(a), respondent will assess a penalty of \$250. (R&TC, § 19141.) Appellant failed to timely file annual SOIs in 2010, 2012, 2014, 2015, 2019, 2020, and 2021.

<sup>4</sup> A corporation that fails to file an SOI, has not filed an SOI during the preceding 24 months, and was certified for penalty pursuant to Corporations Code section 2204 for the same filing period, is subject to suspension. (Corp. Code, § 2205(a).)

<sup>5</sup> During the appeal, appellant submitted documents, including tax return filing instructions from its tax preparer, and a history of appellant's corporate filings and related information from the SOS.

must show that the failure to timely file returns occurred despite the exercise of ordinary business care and prudence, or that cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) When respondent imposes a penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) The burden of proof is on the taxpayer to provide credible and competent evidence supporting a claim of reasonable cause. (*Ibid.*)

R&TC section 18604(a) provides that respondent may grant a reasonable extension of time for filing any return in the manner and form as respondent may determine. For taxable years beginning on or after January 1, 2016, respondent grants a six-month extension to file a tax return for S corporations *in good standing*, with the extended filing due date on the 15th day of the 9th month after the close of the tax year. (See FTB Notice 2016-04; see also FTB Notice 2019-07.) The granting of the extension is automatic, without the need to file a written request, and conditioned on the filing of a return within the automatic extension period. (FTB Notice 2016-04.) The automatic extension of time to file is not an extension of time to pay. (*Ibid.*) As such, an S corporation that cannot file its Form 100S by the original due date may file a Form FTB 3539 (*Payment for Automatic Extension for Corporations and Exempt Organizations*) to timely pay any tax owed without filing a return for the taxable year.<sup>6</sup>

Appellant does not dispute the computation or imposition of the late filing penalty. Instead, appellant raises reasonable cause arguments. Appellant asserts it timely filed an automatic extension on March 13, 2022, but that it was unaware the SOS suspended its corporate status. Appellant alleges that the SOS did not send appellant a reminder to file an SOI or notify appellant that it had missed the SOI filing due date. Appellant also asserts that respondent's August 24, 2021 Corporation Past Due Notice did not explain the \$250 penalty was assessed because of appellant's failure to file an SOI with the SOS. Appellant states that it restored its corporate status on March 24, 2022. Appellant argues that 2021 was the first tax year it made a PTE elective tax payment, and that the PTE elective tax payment was only 10 days late.<sup>7</sup>

Here, appellant asserts that it timely filed for an automatic extension. Appellant submits a copy of filing instructions for Form FTB 3539, from appellant's tax preparer, stating that the

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<sup>6</sup> The instructions for Form FTB 3539 and Form 100S both state that a corporation must be in good standing to have an extension to file.

<sup>7</sup> The penalties at issue in this appeal are late filing penalties, not late payment penalties. Therefore, any arguments related to the late payment of tax are irrelevant to this appeal.

extension is valid until September 15, 2022. However, Form FTB 3539 is only used to remit tax payments; the extension is automatic for taxpayers in good standing. Moreover, the filing instructions from appellant's tax preparer state that no amount is due, and nothing is required to be filed. There is no evidence in the record showing that appellant filed a Form FTB 3539 for the remittance of any tax payment. Appellant was not a corporation in good standing on March 15, 2022, the original due date of the return. From January 25, 2022, through March 24, 2022, appellant's corporate status was suspended by the SOS for failure to file the required annual SOI. (See footnotes 3 and 4, above.) Appellant did not revive its corporate status until March 24, 2022, after the March 15, 2022 due date to timely file the tax return had already passed.<sup>8</sup> Accordingly, appellant was not eligible for the automatic extension, and thus, was required to file its return by the original due date, that is, March 15, 2022.

Although appellant argues that it was unaware of its suspended corporate status and that neither respondent nor the SOS notified it of the missed SOI filing, appellant is required to file an SOI with the SOS every year pursuant to Corporations Code section 1502. Ignorance of the law does not constitute reasonable cause for failure to comply with statutory requirements. (*Appeal of Porreca*, 2018-OTA-095.) Moreover, the failure to timely file a return caused by an oversight does not constitute reasonable cause. (See *Appeal of Quality Tax & Financial Services, Inc.*, 2018-OTA-130P.) Appellant has a history of failing to timely file its required SOIs, missing the annual SOI filing due dates in 2010, 2012, 2014, 2015, 2019, 2020, and 2021. An ordinarily intelligent and prudent businessperson would have ensured that the business complied with SOS reporting requirements after repeated delinquencies; in failing to do so, appellant did not exercise ordinary business care and prudence. Consequently, appellant has failed to establish reasonable cause to abate the late filing penalty.

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<sup>8</sup> A corporation cannot exercise its powers, rights, and privileges while suspended, with limited statutory exceptions that are inapplicable here. (R&TC, § 23301; See *Appeal of Cornerstone Compounding Pharmacy, Inc.*, 2021-OTA-196P (*Cornerstone*).) Upon issuance of a revivor by respondent, the corporation will be reinstated without prejudice to any action, defense, or right which has accrued by reason of the original suspension. (R&TC, § 23305a; see *Cornerstone, supra*.) If a corporation revives its corporate status, any procedural step taken on behalf of the corporation while it was under suspension is validated. (*Cornerstone, supra*.)

In *Cornerstone, supra*, the taxpayer's corporate status was suspended by respondent for failure to file a tax return and pay the balance due, pursuant to R&TC section 23301. Here, the SOS suspended appellant's corporate status for failure to file an SOI, pursuant to Corporations Code section 2205(a). Moreover, because the extension to timely file a tax return is automatic and does not require any filing by the taxpayer, there is no procedural step to be validated. Accordingly, *Cornerstone* is inapplicable to the current appeal.

Issue 2: Whether appellant has established reasonable cause to abate the per-shareholder late filing penalty.

R&TC section 19172.5 provides that a per-shareholder late filing penalty shall be imposed when an S corporation fails to file a tax return on or before the due date, unless it is shown that the failure is due to reasonable cause. (See *Appeal of Quality Tax & Financial Services, Inc.*, *supra*.) Reasonable cause requires a showing that the taxpayer acted as an ordinarily intelligent and prudent businessperson would have acted under similar circumstances. (*Appeal of Quality Tax & Financial Services, Inc.*, *supra*.)

Appellant does not dispute the calculation of this penalty but asserts the same reasonable cause arguments raised for abatement of the late filing penalty. As discussed above, appellant has not shown that its failure to timely file a return occurred despite the exercise of ordinary business care and prudence. Therefore, appellant has failed to establish reasonable cause to abate the per-shareholder late filing penalty.

HOLDINGS

1. Appellant has not established reasonable cause to abate the late filing penalty.
2. Appellant has not established reasonable cause to abate the per-shareholder late filing penalty.

DISPOSITION

OTA sustains respondent's action denying appellant's claim for refund for the 2021 tax year.

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*Steven Kim*

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Steven Kim

Administrative Law Judge

We concur:

DocuSigned by:

*Teresa A. Stanley*

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Teresa A. Stanley

Administrative Law Judge

Signed by:

*Suzanne B. Brown*

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Suzanne B. Brown

Administrative Law Judge

Date Issued: 3/28/2025