

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
H.B. INTERNATIONAL GROUP, INC.) OTA Case No. 231215023
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)
)

OPINION

Representing the Parties:

For Appellant: Emiko Andry, President

For Respondent: Leoangelo C. Cristobal, Attorney

M. GEARY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, H.B. International Group, Inc. (appellant) appeals the following actions by the Franchise Tax Board (respondent): the assessment of additional tax of \$34,166, an accuracy-related penalty of \$6,833.20, and applicable interest for the 2017 tax year; and the assessment of additional tax of \$48,486, an accuracy-related penalty of \$9,697.20, and applicable interest for the 2019 tax year.¹

Appellant waived the 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 2017 and 2019 accuracy-related penalties?
2. Is appellant entitled to relief of interest?

¹ In its December 23, 2023 opening Brief submitted to the Office of Tax Appeals (OTA), appellant states that the tax liabilities have been paid in full. In its May 3, 2024 brief, respondent makes no reference to the payment. R&TC section 19335 states that when a taxpayer makes a payment under these circumstances, OTA shall treat the appeal as an appeal from the denial of a claim for refund. Given that OTA has not received notice of respondent's denial of a claim for refund, it appears that appellant has not yet filed a claim for refund and respondent has not yet applied appellant's payment to the tax years in question. Because the only jurisdictional documents in OTA's file are Notices of Action (NOAs) that were issued before the payments, OTA treats this matter as an appeal from those NOAs. The analysis would be essentially the same under either scenario (i.e., protest denial or claim denial).

FACTUAL FINDINGS

1. Appellant filed its 2017 California Corporation Franchise or Income Tax Return (Form 100) by the October 15, 2018 extended due date, reporting \$33,820 in tax, \$757 in penalties and interest, \$7,000 in payments, and \$27,577 due.
2. Appellant filed its 2019 Form 100 by the due date, reporting \$26,421 in tax, \$6,329 in payments, and \$20,092 due.
3. According to appellant, D. Andry, the former spouse of appellant's current president, was the sole officer of appellant during the 2017 and 2019 tax years and during the time that the Forms 100 for those years were filed. Sometime between the filing of the 2017 Form 100 (October 15, 2018) and the filing of the 2019 Form 100 (March 30, 2020), a court appointed a trustee to manage appellant, and in 2022, ownership and management of appellant was turned over to appellant's current president and spokesperson in this appeal.
4. The IRS audited appellant for the 2017 and 2019 tax years and adjusted appellant's income for both years. Appellant did not report those adjustments to respondent.²
5. Respondent learned of the IRS adjustments to appellant's 2017 and 2019 income, and on July 3, 2023, respondent issued Notices of Proposed Assessment (NPAs) for those years based on the federal determinations.³
6. The NPA for 2017 was for additional tax of \$34,166, an accuracy-related penalty of \$6,833.20, and applicable interest.
7. The NPA for 2019 was for additional tax of \$48,486, an accuracy-related penalty of \$9,697.20, and applicable interest.
8. Appellant filed a timely protest, which respondent acknowledged. Respondent denied the protest and reaffirmed the NPAs with Notices of Action.
9. This timely appeal followed.

² According to IRS account transcripts, the IRS assessed additional tax and penalties for the 2017 tax year in October 2018, and it assessed additional tax and penalties for the 2019 tax year in April 2022.

³ When this Opinion refers to the issuance of a document, it is referring to issuance of the document to appellant.

DISCUSSION

Issue 1: Is appellant entitled to abatement of the 2017 and 2019 accuracy-related penalties?

A taxpayer shall either concede the accuracy of a final federal determination or state how it is erroneous. (R&TC, § 18622(a).) If the IRS makes a change or correction to “any item required to be shown on a federal tax return, including any gross income, deduction, penalty, credit, or tax for any year,” the taxpayer must report the federal change to FTB within six months after the date it becomes final. (*Ibid.*) A deficiency assessment based on a federal audit report is presumptively correct, and the taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.) Unsupported assertions are insufficient to satisfy a taxpayer’s burden of proof with respect to an assessment based on a federal action. (*Ibid.*)

Internal Revenue Code (IRC) section 6662, incorporated by R&TC section 19164, provides for an accuracy-related penalty of 20 percent of the applicable underpayment. IRC section 6662(b) provides, in relevant part, that the penalty applies to the portion of the underpayment attributable to any substantial understatement of income tax. In general, a substantial understatement of tax exists for corporations other than S corporations if the understated amount exceeds the lesser of 10 percent of the tax required to be shown on the return (but at least \$2,500) or \$5,000,000.⁴ (IRC, § 6662(d)(1)(B); R&TC, § 19164(a)(3).) An “understatement” is defined as the excess of the amount of tax required to be shown on the return for the tax year over the amount of tax shown on the return, reduced by any rebate.⁵ (IRC, § 6662(d)(2).) The accuracy-related penalty does not apply to any portion of an underpayment if it is shown that there was reasonable cause for the underpayment and the taxpayer acted in good faith with respect to the underpayment. (IRC, § 6664(c)(1).)

Here, appellant does not dispute the federal adjustment, that there was a substantial understatement, as defined in IRC section 6662, for both tax years at issue, or that respondent correctly calculated the accuracy-related penalties at issue. Appellant’s sole argument appears to be that the person who was responsible for appellant’s income tax compliance for the 2017 and 2019 tax years, the former spouse of the current president, has not been involved with appellant since before the respondent issued the NPAs, and that it is unfair to hold appellant’s current president (who claims to have paid the liability), responsible for the prior owner’s failures to comply.

⁴ There are special rules for some taxpayers. (See, e.g., IRC, § 6662(d)(1)(B), (C).)

⁵ “Rebates” is defined in IRC section 6211(b)(2).

It appears that this appeal (and the protests to respondent) have been motivated by a misunderstanding of the liabilities at issue. As noted by respondent in its brief, respondent did not propose the assessments against appellant's current or former owners or officers. It proposed those assessments against appellant, a corporation and a separate legal and taxable entity in the eyes of the law. (See *Moline Properties, Inc. v. Commissioner* (1943) 319 U.S. 436, 438-439.) Appellant filed the Forms 100 for the 2017 and 2019 tax years and the NPAs and NOAs were issued to appellant. This appeal to OTA was filed by appellant. In these matters, appellant's president has functioned solely in a representative capacity. OTA's authority does not extend beyond the determination of whether appellant is entitled to the requested relief. Appellant has presented no argument or evidence that warrants abatement. Consequently, OTA finds that appellant is not entitled to abatement of the 2017 and 2019 accuracy-related penalties.

Issue 2: 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 to 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.⁶ (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.)

Appellant makes the same argument in connection with this issue that it makes in connection with Issue 1, that appellant's current president should not have been required to pay the penalty and interest attributable to the failure of the former president. The argument is no more viable in this context than it is in the context of Issue 1. The liability at issue is and has always been the corporation's liability.⁷ Consequently, OTA rejects appellant's reasonable cause argument and finds that appellant is not entitled to relief of interest.

⁶ Circumstances that warrant relief of interest are described in R&TC sections 19104 (unreasonable error or delay by respondent), 21012 (reasonable reliance on respondent's written advice), and 19112 (extreme financial hardship). The first two of these are not alleged or shown by the evidence here, and OTA has no jurisdiction to consider an appeal based on R&TC section 19112. (See *Appeal of Moy*, 2019-OTA-057P.)


⁷ There is nothing in OTA's record to suggest that respondent asserted the liability against appellant's current president.

HOLDINGS

1. Appellant is not entitled to abatement of the 2017 and 2019 accuracy-related penalties.
2. Appellant is not entitled to relief of interest.

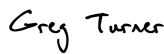
DISPOSITION

Respondent's actions are sustained.

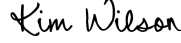
DocuSigned by:


 Michael F. Geary
 Administrative Law Judge

We concur:

Signed by:


 Greg Turner
 Administrative Law Judge

Signed by:


 Kim Wilson
 Hearing Officer

Date Issued: 4/29/2025