

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
NAVARRE CORPORATION) OTA Case No. 240415864
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OPINION

Representing the Parties:

For Appellant: Chris M. Conrad, Representative

For Respondent: Vivian Ho, Attorney

K. WILSON, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Navarre Corporation (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$28,613.25 for the 2021 tax year.

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

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.

FACTUAL FINDINGS

1. Appellant filed a California S Corporation Franchise or Income Tax Return (S-Corp return) on October 17, 2022, reporting tax of \$36,967, pass-through entity (PTE) elective tax¹ of \$229,199, total payments of \$211,539, and franchise or income tax due of \$54,627.

¹ For taxable years beginning on or after January 1, 2021, and before January 1, 2026, a qualified entity doing business in this state, and that is required to file a return, may elect to annually pay an elective tax measured by its qualified net income, computed at the rate of 9.3 percent for the taxable year for which the election is made. (R&TC, § 19900(a)(1).)

2. Appellant's payments totaling \$266,166 were made as follows: \$15,489 overpayment from prior year applied effective April 15, 2021; \$9,840 estimated tax payment on April 15, 2021; \$13,120 estimated tax payment on June 15, 2021; \$9,840 estimated tax payment on December 15, 2021; \$98,000 PTE payment on March 15, 2022; \$6,000 extension payment on March 15, 2022; \$10,250 return payment on September 21, 2022; \$49,000 PTE payment on September 21, 2022; and \$54,627 return payment on October 19, 2022.
3. On April 6, 2023, FTB imposed a late filing penalty of \$28,469.25² and a per-shareholder late filing penalty of \$144, which appellant subsequently paid in October 2023.
4. FTB received appellant's Reasonable Cause – Business Entity Claim for Refund on December 12, 2023.
5. On January 8, 2024, FTB denied appellant's claim for refund.
6. This timely appeal follows.

DISCUSSION

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

R&TC section 19131 provides that a late filing penalty shall be imposed 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. The penalty is specified as 5 percent of the tax due for each month that a valid tax return is not filed after it is due, not to exceed 25 percent of the tax. (R&TC, § 19131(a).) When FTB imposes a penalty, the law presumes that the penalty was imposed correctly, and the burden of proof is on the taxpayer to show that reasonable cause exists to support abating the penalty. (*Appeal of Xie*, 2018-OTA-076P.) To establish reasonable cause, the taxpayer must show that the failure to file timely returns occurred despite the exercise of ordinary business care and prudence, or that cause existed as would prompt an ordinary intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) Even if the taxpayer is unaware of a filing requirement, ignorance of the law is not an excuse for failing to file a timely return. (*Ibid.*)

Here, appellant does not dispute that the filing was untimely or the computation of the penalty but contends that reasonable cause exists to abate the penalty. Appellant contends that

² Appellant's return was filed over five months late (0.25 x \$113,877 late paid liability = \$28,469.25). (R&TC, §19131(a).) Appellant's payments made on September 21, 2022, and October 19, 2022, did not reduce the penalty amount as these payments were also more than five months late. (See R&TC, § 19131(c).)

it was advised by its tax preparer that the new PTE tax did not create an additional tax liability and therefore did not timely pay its liability. Once appellant discovered that the PTE tax was underpaid, it made efforts to pay the liability before the extended due date of the return on September 15, 2022.³ Appellant relies on *Rohrbaugh v. U.S.* (7th Cir. 1979) 611 F.2d 211 (*Rohrbaugh*) for the proposition that “reasonable cause” includes a taxpayer’s reliance on competent tax professional’s improper advice pertaining to a matter of tax law.

Appellant’s reliance on *Rohrbaugh* is misplaced. As the court in *Rohrbaugh* notes, “[t]he situation might be entirely different if filing an income tax return were involved.” (*Rohrbaugh, supra*, at p. 214.) Furthermore, in *U.S. v. Boyle* (1985) 469 U.S. 241 (*Boyle*), the United State Supreme Court established the “bright line” rule that each taxpayer has a personal, non-delegable obligation to file a tax return by the due date and, as such, a taxpayer’s reliance on a third party to timely file a federal return does not constitute reasonable cause for a late filing. (*Appeal of Fisher, 2022-OTA-337P, Boyle, supra* at pp. 248-252.) The assumption that a third party retained to file a return has fulfilled that obligation is insufficient to relieve the taxpayer of the statutory obligation to timely file. (*Boyle, supra* at p. 250.) The Court, however, did observe that reasonable cause may exist if a taxpayer reasonably relies on the advice of an accountant or attorney with respect to substantive matters of tax law or whether a return needs to be filed in the first place, even when such advice turned out to have been mistaken. (*Id.* at pp. 250-251.)

While reliance on advice of an accountant or attorney on whether the taxpayer has an obligation to file may constitute reasonable cause, appellant has only asserted here that its advisor counseled it as to its liability for payment, not for the timely filing of a return, nor has appellant produced evidence of such advice beyond the mere assertion it occurred. Appellant has not demonstrated that its tax preparer provided advice that caused it to fail to timely file its S-Corp return for the 2021 tax year. The fact that a tax preparer was expected to attend to a matter does not relieve a taxpayer of the duty to comply with the statute, and an agent’s failure to file a tax return cannot constitute reasonable cause for the taxpayer. (*Appeal of Fisher, supra.*) OTA finds that FTB properly imposed the late filing penalty and appellant has not demonstrated reasonable cause for its failure to timely file a return for 2021.

³ For the 2021 tax year, the due date to file a return for a calendar-year S corporation, such as appellant, was March 15, 2022. (R&TC, § 18601(d)(1).) FTB automatically allows corporations, including S corporations, a six-month extension of time to file a return. (See R&TC, § 18604(a); FTB Notice 2016-04.)

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

California imposes a per-shareholder late filing penalty on an S corporation for the failure to file a return on or before the due date, unless it is shown that the late filing is due to reasonable cause. (R&TC, § 19172.5(a).) The penalty is imposed for each month (or fraction thereof) that the tax return is late (not to exceed 12 months), multiplied by the number of shareholders in the corporation, multiplied by \$18. For tax year 2021, appellant needed to file its S-Corp return on or before the 15th day of the third month following the close of its taxable year. (R&TC, § 18601(d)(1).) Appellant filed its return on October 17, 2022, eight months after the original due date; thus, the per-shareholder late filing penalty was \$144.⁴

When FTB imposes a penalty, the law presumes that the penalty was imposed correctly, and the burden of proof is on the taxpayer to show that reasonable cause exists to support abating the penalty. (*Appeal of Xie, supra.*) To establish reasonable cause, the taxpayer must show that the failure to file timely returns occurred despite the exercise of ordinary business care and prudence, or that cause existed as would prompt an ordinary intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of GEF Operating, Inc., supra.*) Even if the taxpayer is unaware of a filing requirement, ignorance of the law is not an excuse for failing to file a timely return. (*Ibid.*)

Here, appellant presents the same argument as it did for the late filing penalty. However, for the reasons expressed above, appellant also has not established reasonable cause to abate the per-shareholder late filing penalty.


⁴ The per-shareholder late filing penalty is calculated to be \$144 (\$18 per month x 8 months x 1 shareholder).

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.

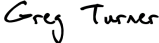
DISPOSITION

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


Signed by:


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 Kim Wilson
 Hearing Officer

We concur:

Signed by:


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 Greg Turner
 Administrative Law Judge

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 Sheriene Anne Ridenour
 Administrative Law Judge

Date Issued: 4/17/2025