

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
**JACOB RASTEGAR M.D., INC.** ) OTA Case No. 230613538  
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**OPINION**

Representing the Parties:

For Appellant: Parham Khorsandi, Attorney

For Respondent: Tristen Thalhuber, Attorney  
Christophr Tuttle, Attorney

For Office of Tax Appeals: Michelle Huh, Attorney

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Jacob Rastegar M.D., Inc. (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$29,889.13 for the 2021 taxable year.

Office of Tax Appeals (OTA) Panel Members Seth Elsom, John O. Johnson, and Tommy Leung held an electronic hearing for this matter on March 20, 2025. At the conclusion of the hearing, the record was closed and this matter was submitted for an Opinion.

**ISSUES**<sup>1</sup>

1. Whether the dishonored payment penalty should be abated.
2. Whether the late payment penalty should be abated.

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<sup>1</sup> For the 2021 taxable year, respondent imposed an estimated tax penalty of \$1,132.47, a late payment penalty of \$43,765.71, and a dishonored payment penalty of \$5,294.42, plus interest. However, in appellant’s appeal letter, appellant only requested abatement of the dishonored payment penalty and the late payment penalty in the amount of \$29,889.13. Thus, the estimated tax penalty and interest will not be addressed by this Opinion.

FACTUAL FINDINGS

1. Appellant is an “S” corporation with a single shareholder.
2. For the 2021 taxable year, appellant remitted estimated tax payments of \$13,522 and \$10,575 on September 17, 2021, and December 8, 2021, respectively. Appellant also remitted an extension payment of \$12,432 on March 11, 2022, and a pass-through entity tax payment of \$350,000 on May 2, 2022.<sup>2</sup>
3. On September 14, 2022, appellant filed its 2021 California S Corporation Franchise or Income Tax Return (Form 100S), reporting a California net income of \$5,901,114 and a total tax of \$637,321. After claiming total payments of \$397,682, including a prior year overpayment credit of \$11,153, appellant reported a franchise or income tax due of \$239,639. After self-assessing penalties and interest of \$25,082, appellant reported a total amount due of 264,721. On or about September 14, 2022, appellant made an electronic payment of \$264,721 using respondent’s Web Pay system, which was subsequently dishonored.<sup>3</sup>
4. On November 14, 2022, appellant’s accountant (apparently at appellant’s behest) contacted respondent by telephone, requesting information on the balance due, penalties and interest. Respondent informed appellant of the balance due and advised appellant to submit a claim for refund based on reasonable cause for the abatement of penalties and interest.
5. Appellant remitted payments of \$295,500 and \$850 on November 18, 2022, and November 28, 2022, respectively, to satisfy the balance due for the 2021 taxable year. Respondent issued appellant a refund of \$21.88.<sup>4</sup>

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<sup>2</sup> Appellant remitted a pass-through entity tax payment of \$350,000 on December 29, 2021, which was dishonored with no dishonored payment penalty being imposed by respondent.

<sup>3</sup> In a letter dated December 12, 2022, attached to the reasonable cause form, appellant’s accountant stated that they sent appellant a tax payment voucher on September 15, 2022, and at that time, Dr. Rastegar, appellant’s shareholder, contracted COVID-19 and had been sick for several days. However, respondent’s records indicate that the return payment of \$264,721 was made on September 14, 2022, via respondent’s Web Pay system. Furthermore, on appeal, appellant provided a history of its payments to respondent via Web Pay, which shows a return payment made on September 14, 2022. Thus, appellant’s return payment is deemed to have been made on September 14, 2022.

<sup>4</sup> The record does not indicate that respondent issued appellant a State Income Tax Balance Due notice.

6. On December 12, 2022, appellant filed a refund claim for \$29,889.13. Appellant asserted that the total penalties and interest due was \$56,689.12 and indicated that it conceded penalties and interest of \$26,799.99, and disputed penalties of \$29,889.13.
7. Respondent denied appellant's refund claim.

### DISCUSSION

#### Issue 1: Whether the dishonored payment penalty should be abated.

As applicable to this appeal, whenever “any instrument in payment [of a tax liability] ... is not duly paid, in addition to any other penalties provided by law, there shall be paid as a penalty by the person who tendered such instrument, in the same manner as tax, an amount equal to 2 percent of the amount of such instrument.” (R&TC, § 19134; Internal Revenue Code (IRC) § 6657.<sup>5</sup>) This penalty is often referred to as the “dishonored payment penalty.” The dishonored payment penalty shall not apply if the person tendered such instrument in good faith and with reasonable cause to believe that it would be duly paid. (IRC, § 6657.) This penalty applies to payments made by credit card or electronic funds transfer, as well as by check or money order. (R&TC, § 19134(b).) As relevant here, the amount of the penalty is 2 percent of the amount of the payment. (IRC, § 6657.)

Like other penalties containing a “reasonable cause” exception, the taxpayer bears the burden of proving that reasonable cause exists to support abatement of the penalty. (See *Appeal of Red Vision Systems, Inc.*, 2023-OTA-561P.) To establish reasonable cause, the taxpayer must show that it acted as an ordinarily intelligent and prudent businessperson would have acted under similar circumstances. (See *Appeal of Auburn Old Town Gallery, LLC*, 2019-OTA-319P.) While not binding California authority, the IRS's Internal Revenue Manual (IRM) states that the dishonored payment penalty should be abated for reasonable cause in certain instances, such as when the taxpayer has sufficient funds, but the payment was dishonored due to a bank or tax agency error. (See IRM, § 20.1.10.7.4 (1).)

Here, appellant submitted a payment of \$264,721 on September 14, 2022, but the payment was subsequently dishonored. Consequently, respondent properly imposed the dishonored payment penalty. Appellant does not contest whether the dishonored payment penalty was properly imposed or computed. Instead, appellant argues that the dishonored payment penalty should be abated for reasonable cause. Appellant contends that its bank account had sufficient funds to satisfy the balance due, but because appellant's shareholder

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<sup>5</sup> R&TC section 19134 applies to both individual and corporate taxpayers. (See R&TC, § 19134, as amended by Stats. 1993, ch. 31, § 57, No. 3 West's Cal. Legis. Service.)

(Dr. Rastegar) contracted COVID-19 and mistakenly submitted the incorrect bank account information in the online payment system, the payment was subsequently dishonored. Appellant requests abatement of the dishonored payment penalty based on appellant's history of timely fulfillment of its tax obligations and the circumstances that were beyond appellant's control when the September 14, 2022 payment was made.

However, appellant has not shown that it exercised due care and diligence in monitoring its bank account and quickly ascertaining whether the scheduled electronic payment from its account to respondent was in fact paid. (See *Appeal of Scanlon*, 2018-OTA-075P.) Appellant did not satisfy the balance due on its 2021 Form 100S until November 18, 2022, which was about two months after submitting its return. Even if appellant made an honest mistake while submitting its online payment, such mistake or oversight, by itself, does not constitute reasonable cause. (See *Appeal of Friedman*, 2018-OTA-077P.) Furthermore, appellant's request for abatement of the dishonored payment penalty based on its history of timely fulfillment of its tax obligations does not qualify for abatement of a timeliness penalty under R&TC section 19132.5 because it is not an individual.<sup>6</sup> Moreover, because this was not appellant's first dishonored payment, a prudent business person would have used extra care to ensure that the proper bank account information was provided to respondent.

Thus, appellant has not established reasonable cause to abate the dishonored payment penalty.

Issue 2: Whether the late payment penalty should be abated.

The late payment penalty is imposed when a taxpayer fails to pay the amount shown as due on the return on or before the date prescribed for payment of the tax. (R&TC, § 19132(a)(1)(A).) Generally, the date prescribed for the payment of the tax is the due date of the return (determined without regard to any extension of time for filing the return). (R&TC, § 19001.) For S corporate taxpayers, such as appellant, the due date of its return (without regard to any extension), and the date prescribed for payment of the tax, is the 15th day of the third month following the close of its tax year. (R&TC, § 18601(d)(1).)

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<sup>6</sup> R&TC section 19132.5(a) provides a one-time abatement of a timeliness penalty for individual taxpayers subject to the Personal Income Tax Law. The one-time abatement does not apply to corporate taxpayers, and the statute only applies to requests for abatement made for tax years beginning on or after January 1, 2022. (See R&TC, § 19132.5(b), (f).) Although the IRS administers a program called "First Time Abate," in which the IRS may administratively abate the late payment penalty if taxpayers have timely filed returns and paid taxes due for the past three years, neither the California Legislature nor respondent has adopted a comparable program for corporate taxpayers for the 2021 tax year.

This penalty may be abated if the taxpayer shows that the failure to make a timely payment of tax was due to reasonable cause and not due to willful neglect. (R&TC, § 19132(a)(1).) When respondent imposes a penalty, the law presumes that the penalty was imposed correctly, and the taxpayer has the burden of proving that reasonable cause exists to support abatement of the penalty. (*Appeal of Red Vision Systems, Inc., supra.*) To establish reasonable cause for the late payment of tax, a taxpayer must show that the failure to make a timely payment of the proper amount of tax occurred despite the exercise of business care and prudence. (*Ibid.*) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid.*)

Illness or other personal difficulties may be considered reasonable cause if the taxpayer presents credible and competent proof that they were continuously prevented from complying with the law. (*Appeal of Triple Crown Baseball LLC, 2019-OTA-025P.*) 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. (*Ibid.*) The failure to timely remit the balance due on a tax liability caused by an oversight does not, by itself, constitute reasonable cause. (See *Appeal of Friedman, supra.*)

Here, appellant's tax payment was due on March 15, 2022, but appellant did not pay the entire amount of tax due until November 18, 2022. Thus, respondent properly imposed the late payment penalty. Appellant does not contest whether the late payment penalty was properly imposed or computed. Instead, appellant argues that reasonable cause exists for the late payment of tax based on the same arguments that it made with respect to the dishonored payment penalty.

However, appellant has not shown that Dr. Rastegar's illness prevented the timely payment of tax from the date that its tax was due, which was March 15, 2022, to when appellant paid the entire amount due on its return, which was November 18, 2022. Furthermore, appellant's late payment of tax from September 14, 2022, to November 18, 2022, was a result of appellant's mistake in submitting the incorrect bank information on respondent's online payment system. If appellant exercised ordinary business care and prudence, appellant would have verified the correct banking information before submitting its payment online, as appellant had most likely done when it remitted payments on September 17, 2021, December 8, 2021, March 11, 2022, and May 2, 2022, for the 2021 tax year. Consequently, appellant's oversight does not constitute reasonable cause for the late payment of tax.

Thus, appellant has not established reasonable cause to abate the late payment penalty.


HOLDINGS


1. The dishonored payment penalty should not be abated.
2. The late payment penalty should not be abated.

DISPOSITION

Respondent's action is sustained.

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 Tommy Leung  
 Administrative Law Judge

We concur:  
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 Seth Elsom  
 Hearing Officer

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 John O. Johnson  
 Administrative Law Judge

Date Issued: 5/27/2025