

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
LCG HOLDING CO, LLC) OTA Case No. 231114753
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OPINION

Representing the Parties:

For Appellant: Raymond J. Lucia Jr., CPA

For Respondent: Tristen Thalhuber, Attorney

For Office of Tax Appeals: John Yusin, Attorney

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, LCG Holding Co, LLC (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$35,772.23 for the 2021 taxable year.

Appellant waived its right to an oral hearing; therefore, this matter is being decided based on the written record. (See Cal. Code Regs., tit. 18, § 30209(a).)

ISSUES

1. Whether appellant has established that reasonable cause existed for paying its taxes late.
2. Whether interest can be abated.

FACTUAL FINDINGS

1. Appellant is a calendar year taxpayer and remitted its 2021 limited liability company (LLC) tax and fee in 2021, as well as a pass-through entity elective tax (PTE tax) payment of \$385,530.
2. As relevant to this appeal, R&TC section 19900 was amended effective February 9, 2022, to include guaranteed payments in qualified net income, which was made retroactive to taxable years beginning on or after January 1, 2021.¹

¹ Sen. Bill No. 113 (2021-2022 Reg. Sess.) §14, effective February 9, 2022.

3. On August 29, 2022, appellant filed its 2021 LLC tax return (Form 568), reporting total tax and fees of \$768,361.² Appellant also reported a total tax and fee due of \$371,041, which it paid on September 9, 2022.³
4. Respondent processed appellant's 2021 Form 568 and imposed a late-payment penalty of \$29,619.28, plus interest, because appellant failed to pay the full PTE tax before its due date of March 15, 2022.
5. On June 14, 2023, appellant remitted a payment of \$34,923.25 for the late-payment penalty, plus interest, and filed a refund claim therefor, which respondent denied.

DISCUSSION

Issue 1: Whether appellant has established that reasonable cause existed for paying its taxes late.

A late payment penalty is imposed when a taxpayer fails to pay the amount shown on the return by the date prescribed for the payment of tax. (R&TC, § 19132(a).) Generally, the date prescribed for the payment of the tax is the due date of the return, without regard to any extension of time for filing the return. (R&TC, § 19001.) For LLCs, 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 taxable year. (R&TC, § 18633.5(a).)

For taxable years beginning on or after January 1, 2021, a qualified entity (such as appellant) may elect to pay the PTE tax. (R&TC, § 19900(a)(1).) The PTE tax is equal to 9.3 percent of "qualified net income" which means the sum of the pro rata share or distributive share of income, and any guaranteed payments described by Section 707(c) of the Internal Revenue Code. (R&TC, § 19900(a)(2).) For 2021, payment of the PTE tax is also due on or before the due date of the original return (without regard to any extension of time for filing) for the taxable year of the PTE tax election. (R&TC, § 19904(a)(1).)

Appellant was required to pay the PTE tax by March 15, 2022.⁴ Appellant paid part of the PTE tax, \$385,530, before March 15, 2022; however, the balance of the PTE tax, \$370,241,

² Appellant reported \$755,771 of PTE tax.

³ Respondent adjusted the amount due to \$370,241, which it computed by deducting payments of \$398,120 (computed by adding the \$385,530 PTE tax payment to the \$11,790 fee and \$800 tax payments) from the total reported tax and fee liability of \$768,361. This is also the difference between the reported PTE tax amount of \$755,771 and the timely \$385,530 partial payment made for PTE tax.

⁴ (R&TC, § 18633.5(a).) Appellant filed its Form 568 based on a calendar year, and thus, appellant's 2021 tax return was due on March 15, 2022.

was untimely paid on September 9, 2022. There is no dispute that respondent properly computed and imposed the late payment penalty. However, appellant argues there is reasonable cause to abate the late payment penalty.

The late payment penalty may be abated where the failure to make a timely payment was due to reasonable cause and not willful neglect. (R&TC, § 19132(a)(1).) To establish reasonable cause, the taxpayer must show that the failure to timely pay occurred despite the exercise of ordinary business care and prudence. (*Appeal of Scanlon*, 2018-OTA-075P.) Respondent's determination is presumed to be correct, and the taxpayer has the burden of proving otherwise. (*Appeal of Davis and Hunter-Davis*, 2020-OTA-182P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid.*) In the absence of credible, competent, and relevant evidence showing error, respondent's determinations must be upheld. (*Ibid.*) The burden of proof requires proof by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(b).) The law provides that taxpayers have a non-delegable obligation to pay their taxes by the due date; thus, a taxpayer's reliance on an agent, such as an accountant, to pay by the due date is not reasonable cause. (See *U.S. v. Boyle* (1985) 469 U.S. 241, 252; *Appeal of Summit Hosting LLC*, 2021-OTA-216P.)

Appellant contends there was reasonable cause for the late payment due to the complexity of the newly enacted PTE tax, and more specifically that it relied on a CPA for the payment deadline and requirements related to the PTE tax. However, "one does not have to be a tax expert to know that . . . taxes must be paid when they are due Reliance by a lay person on a lawyer is of course common; but that reliance cannot function as a substitute for compliance with an unambiguous statute." (*U.S. v. Boyle, supra*, at p. 251.) R&TC section 19904(a)(1) clearly provides the due date of the PTE tax payment and is unambiguous in that regard.

The record includes appellant's reasonable cause explanation, which asserted that the PTE tax statutes and subsequent legislative amendments delayed the issuance of guidance and tax forms by respondent, that in turn delayed the receipt of Schedule K-1s from passthrough entities in which appellant had ownership interests. Appellant also pointed to the timely LLC fee and tax payments, \$11,790 and \$800 respectively, and the partial PTE tax payment that was timely made, in his effort to establish reasonable cause.

However, unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of Scanlon, supra.*) Appellant has not provided a detailed explanation or other corroborating evidence indicating what, if any, delays by respondent caused the delay in computing and paying the PTE tax shown on its Form 568. Appellant has not identified any

pass-through entities in which it had an ownership interest, or explained how Schedule K-1s from any such entities were delayed.⁵ In fact, appellant made the initial \$385,530 PTE tax payment on December 22, 2021, prior to its due date of March 15, 2022, and has not explained how the 2022 amendment to R&TC section 19900 adding guaranteed payments complicated the computation of the PTE tax so much as to cause its remittance more than five months late. Accordingly, appellant has not demonstrated reasonable cause for its late payment of tax.

Issue 2: Whether interest can be abated.

The imposition of interest is mandatory and accrues on a tax deficiency regardless of the reason for the underpayment. (R&TC, § 19101(a); *Appeal of Balch*, 2018-OTA-159P.) There is no reasonable cause exception to the imposition of interest. (*Appeal of Moy*, 2019-OTA-057P.) Therefore, to obtain interest relief appellant must qualify under R&TC section 19104 (pertaining to unreasonable error or delay by respondent in the performance of a ministerial or managerial act), section 19112 (pertaining to extreme financial hardship caused by significant disability or other catastrophic circumstance), or section 21012 (pertaining to reasonable reliance on the written advice of respondent). (*Ibid.*) Appellant did not allege, and the record does not reflect, that any of these waiver provisions are applicable here. Therefore, there is no basis for abating interest.

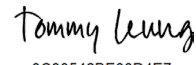
⁵ The Office of Tax Appeals has held that lack of documentation, including Schedule K-1s from pass-through entities, or difficulty in calculating a tax liability does not, alone, constitute reasonable cause for a late-payment penalty. (*Appeal of Moren*, 2019-OTA-176P.)

HOLDINGS

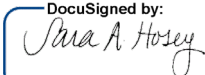
1. Appellant did not establish that there was reasonable cause for paying its taxes late.
2. Interest cannot be abated.

DISPOSITION


Respondent's action is sustained.

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 Tommy Leung
 Administrative Law Judge

We concur:
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 Sara A. Hosey
 Administrative Law Judge

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 Suzanne B. Brown
 Administrative Law Judge

Date Issued: 6/12/2025