

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
R.P. GENERAL CONSTRUCTION INC.) OTA Case No. 241017586
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OPINION

Representing the Parties:

For Appellant: Ramiro Ponce, President

For Respondent: Paige Chang, Attorney

S. ELSOM, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R.P. General Construction Inc. (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$1,148.07, plus applicable interest for the 2022 tax year.¹

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single panel member. (Cal. Code Regs., tit. 18, § 30209.05(b).) 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 for the abatement of the late payment penalty.
2. Whether appellant has established a legal basis for the abatement of the estimated tax penalty.
3. Whether appellant has established a legal basis for the abatement of interest.

¹ On appeal, respondent corrects the amount at issue from \$1,148.07 to \$1,163.14, which is the sum of the late filing penalty of \$501.30, plus the estimated tax penalty of \$395.09, plus interest of \$266.75.

FACTUAL FINDINGS

1. On April 1, 2022, appellant made an electronic estimated payment of tax for the 2021 tax year of \$16,192 in error.² Respondent refunded the payment to appellant on November 1, 2022.
2. Appellant subsequently made estimated payments of tax for the 2022 tax year of \$16,193 on June 17, 2022, and \$16,192 on February 3, 2023, and an \$800 extension payment of tax on March 15, 2023 (\$33,185 total).
3. On August 16, 2023, appellant filed a 2022 Form 100, California Corporation Franchise or Income Tax Return, reporting total tax of \$38,755, estimated tax payments of \$48,577, amounts paid with an extension of time to file tax return of \$800, and an overpayment of \$10,622. After reducing the overpayment by penalties and interest of \$40, appellant reported a refund due of \$10,582.
4. On May 1, 2024, respondent sent to appellant a Consolidated Return Information Notice, calculating tax due of \$5,570 (reported total tax of \$38,755 less total payments of \$33,185) and imposing penalties of \$840.69 (\$445.60 late payment penalty plus estimated tax penalty of \$395.09), plus applicable interest, for a total balance due of \$6,601.79.
5. On June 19, 2024, respondent sent appellant a Corporation Past Due Notice (Past Due Notice), which recalculated penalties of \$869.39 (late filing penalty of \$501.30 plus estimated tax penalty of \$395.09), plus accrued interest, for a total balance due of \$6,718.07.
6. On July 1, 2024, appellant made a \$6,718.07 payment in satisfaction of the balance due for the 2022 tax year³ and filed a Reasonable Cause – Business Entity Claim for Refund form to request a refund of the late filing penalty and the estimated tax penalty, plus accrued interest.
7. Respondent denied appellant's claim for refund.
8. This timely appeal followed.

² Appellant in its Reasonable Cause – Business Entity Claim states, “[w]e made our first payment for the 2022 tax year on April 1, 2022, in the amount of \$16,192. However, due to a clerical error, this payment was mistakenly applied to the incorrect tax year.”

³ Appellant made an additional payment of \$15.10 on July 15, 2024, to satisfy interest accrued after respondent issued the Past Due Notice.

DISCUSSIONIssue 1: Whether appellant has established reasonable cause for the abatement of the late payment penalty.

California imposes a penalty when a taxpayer fails to pay the amount of tax shown as due on the return by the date prescribed for the payment of the tax. (R&TC, § 19132.) Generally, the date prescribed for a corporation's payment of the tax is the due date of the return (without regard to extensions of time for filing). (R&TC, §§ 19001, 18601(b).) For the 2022 tax year, California postponed the payment due date to November 16, 2023.⁴ When respondent imposes a penalty, the law presumes that the penalty was imposed correctly, and the burden of proof is on the taxpayer to establish otherwise. (*Appeal of Xie*, 2018-OTA-076P.) To overcome the presumption of correctness attached to the penalty, a taxpayer must provide credible and competent evidence supporting a claim of reasonable cause; otherwise, the penalty cannot be abated. (*Ibid.*)

The late payment penalty may be abated if the taxpayer shows that the failure to make a timely payment of tax was due to reasonable cause and was not due to willful neglect. (R&TC, § 19132(a)(1).) To establish reasonable cause for a 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 ordinary business care and prudence. (*Appeal of Scanlon*, 2018-OTA-075P.) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.) As to appellant's burden, the applicable standard of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(b).) To meet this evidentiary standard, a party must establish by documentation or other evidence that the circumstances it asserts are more likely than not to be correct. (*Appeal of Belcher*, 2021-OTA-284P.)

Appellant does not argue that the late payment penalty was improperly calculated or imposed but instead presents reasonable cause arguments for the abatement of it. Appellant argues that on April 1, 2022, appellant made a payment of \$16,192 intended for the 2022 tax year, but due to a clerical error, appellant accidentally applied the payment to the 2021 tax year.

⁴ Due to the 2023 California winter storms, the IRS postponed the deadline to perform time sensitive actions, which include the payment of tax. The postponement relates to certain deadlines falling on or after December 27, 2022, through November 16, 2023, and applies to "individuals and households affected by severe winter storms, flooding, and mudslides that reside or have a business" in certain California counties. Appellant's return reports an address in San Diego County, which is a qualifying county. California conformed to this postponement. (<https://www.ftb.ca.gov/file/when-to-file/california-severe-winter-storms.html>; see also *Appeal of R. Pomrehn*, 2025-OTA-269P; Pending Precedential.)

On appeal, appellant states, “[u]pon realizing the mistake, we promptly made the subsequent payments correctly . . .” Appellant further asserts that it corrected the mistake by remitting a payment on June 17, 2022, and on February 3, 2023.

However, even if appellant made an honest mistake while submitting its April 1, 2022 online payment, such mistake or oversight, by itself, does not constitute reasonable cause. (See *Appeal of Friedman*, 2018-OTA-077P.) The record for this appeal demonstrates that, regardless of whether appellant’s June 17, 2022, or February 3, 2023, payment was intended to correct the prior payment error, a tax due of \$5,507 still remained unpaid by the November 16, 2023 payment deadline. An ordinarily intelligent and prudent businessperson would have reviewed the tax return (filed on August 16, 2023) and payment records to determine the correct amount of tax required to be paid by the payment deadline. Here, appellant does not explain, or provide any information to prove why, appellant did not pay the entire balance of tax due until July 1, 2024.⁵ Therefore, appellant has not satisfied its burden of proof to show reasonable cause for the late payment of tax. (*Appeal of Belcher, supra.*)

Issue 2: Whether appellant has established a legal basis for the abatement of the estimated tax penalty.

A corporation that underpays its estimated tax is liable for an addition to tax, which is treated and often referred to as a penalty, equal to a specified rate of interest applied to the amount of the underpayment. (R&TC, §§ 19142, 19144.) Relief from the estimated tax penalty is not available upon a showing of reasonable cause, although limited statutory exceptions to the penalty exist.⁶ (R&TC, §§ 19142(b), 19147, 19148; *Appeal of Weaver Equipment Co.* (80-SBE-048) 1980 WL 4976.)

Appellant does not argue that the estimated tax penalty was improperly calculated or imposed and instead requests abatement of it based upon reasonable cause. Appellant’s argument to abate the estimated tax penalty applies the same reasonable cause type arguments that appellant made for abatement of the late payment penalty. As stated above,

⁵ Appellant’s April 1, 2022, payment of \$16,192 which appellant erroneously remitted for the 2021 tax year instead of the 2022 tax year, was refunded to appellant on November 1, 2022. Appellant does not explain what steps, if any, it took to contact respondent to inquire about the reason for this refund, or what steps it took to return and remit this payment to respondent for the correct tax year (2022) prior to the postponed due date of November 16, 2023, following receipt of this refund. Appellant’s failure to remit the additional \$16,192 payment for the 2022 tax year resulted in an underpayment of tax of \$5,503, rather than the overpayment of tax of \$10,622 appellant reported on its return.

⁶ For example, several exceptions to imposition of the penalty are found in R&TC sections 19142(b), 19147, and 19148, but appellant does not allege, and the evidence does not show, that any of those exceptions, apply to the facts here.

there is no reasonable cause exception to the imposition of the estimated tax penalty. (*Appeal of Weaver Equipment Co., supra.*) Appellant does not argue the narrow exceptions to the estimated tax penalty apply, and as a result, OTA does not address them here. (R&TC, §§ 19142(b), 19147, 19148.)

Issue 3: Whether appellant has established a legal basis for the abatement of interest.

Interest must be assessed from the date a tax payment is due through the date that it is paid. (R&TC, § 19101(a).) Imposing interest is mandatory; it is not a penalty, but it is compensation for the taxpayer's use of money after it should have been paid to the state. (*Appeal of Moy, 2019-OTA-057P.*) There is no reasonable cause exception to the imposition of interest. (*Ibid.*) To obtain interest abatement, a taxpayer must qualify under the waiver provisions of R&TC section 19104 or 21012.⁷ R&TC section 19104 provides for interest abatement when the interest is attributable in whole or in part to any unreasonable error or delay by respondent when performing a ministerial or managerial act. R&TC section 21012 provides for interest abatement when a taxpayer reasonably relied on respondent's written advice.

Here, appellant does not argue that any of these waiver provisions apply. Appellant does not contend that there was any unreasonable error or delay by respondent. There is no evidence that appellant obtained or reasonably relied on written advice from respondent. Therefore, appellant has not demonstrated any legal grounds for interest abatement.

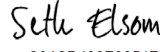
⁷ R&TC section 19112 also allows respondent to abate interest, but that statute requires a taxpayer to demonstrate extreme financial hardship caused by a significant disability or other catastrophic circumstance. OTA does not have the legal authority to review or reverse respondent's denial of interest abatement based on extreme financial hardship. (*Appeal of Moy, supra.*)

HOLDINGS

1. Appellant has not established reasonable cause for the abatement of the late payment penalty.
2. Appellant has not established a legal basis for the abatement of the estimated tax penalty.
3. Appellant has not established a legal basis for the abatement of interest.

DISPOSITION

Respondent's actions denying appellant's claim for refund are sustained.

Signed by:

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Seth Elsom
Hearing Officer

Date Issued: 6/12/2025