

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
ROSC, LLC) OTA Case No. 231214929
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OPINION

Representing the Parties:

For Appellant: Jonathan Kalinski, Attorney

For Respondent: Noel Garcia-Rosenblum, Attorney

E. PARKER, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19324, ROSC, LLC (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$181,135.64, plus interest, 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).

ISSUE

Whether appellant has shown reasonable cause to abate the late payment penalty.

FACTUAL FINDINGS

1. For the 2021 tax year at issue, appellant was classified as a limited liability company (LLC) for federal and California income tax purposes. During 2021, the only two members of the LLC were a married couple, husband (H) and wife (W).
2. On January 19, 2022, member H scheduled an untimely March 18, 2022 payment of \$1,505,000 for the 2021 tax year.
3. On September 9, 2022, member H received an email from appellant’s tax preparer explaining that at the time appellant made its estimated tax payment, only member H’s share of income was included in the computation of the pass-through entity elective tax (PTET). The tax preparer recommended that member W’s share of income also be included in the election and appellant should pay an additional \$1.5 million of PTET.

- The preparer estimated the potential federal personal income tax benefits that the members would realize and of the estimated California late payment penalty and interest that would be imposed on appellant as a result of including member W in the PTET.
4. On September 13, 2022, appellant timely filed a 2021 tax return, within the extension period, reporting an LLC fee of \$11,790, an annual LLC tax of \$800, and a PTET of \$2,747,098 allocated between appellant's two members, H and W. After applying the March 18, 2022 payment of \$1,505,000, appellant reported a balance due of \$1,242,098.
 5. On September 14, 2022, appellant made a second untimely payment of \$1,242,098.
 6. FTB imposed a late payment penalty of \$181,135.24, plus interest.
 7. Appellant paid the late payment penalty, plus interest, and filed a claim for refund based on reasonable cause.
 8. FTB denied appellant's claim for refund and this timely appeal followed.

DISCUSSION

R&TC section 19132 imposes a late payment penalty when a taxpayer fails to pay the amount shown as due on the return by the date prescribed for the payment of the tax unless the failure to pay is due to reasonable cause and not due to willful neglect. R&TC section 19900(a)(1) provides that a qualified entity doing business in California may elect to annually pay a PTET according to or measured by its qualified net income. R&TC section 19900(c)(1) states that the qualified entity may include in its qualified net income the pro rata share or distributive share of the income of its partners, shareholders, or member upon their consent. The consenting partners, members, or shareholders of the entity are allowed a corresponding credit against the net tax on their individual income tax returns. (R&TC, § 17052.10.) For taxable years beginning on or after January 1, 2021, and before January 1, 2022, the PTET is due on or before the due date of the original return that the entity is required to file. (R&TC, § 19904(a)(1).) For the 2021 tax year, the due date to file a return for a calendar-year LLC, such as appellant, was March 15, 2022. (R&TC, § 18633.5(a).) Appellant does not dispute that the payments made on March 18, 2022, and September 14, 2022, were late or that the penalty was properly computed and imposed. Rather, appellant asserts reasonable cause exists to abate the late payment penalty.

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 not willful neglect. (R&TC, § 19132(a)(1).) Reasonable cause must exist not only at the time payment of the tax became

due but must continue to exist until actual payment is remitted. (*Appeal of Moren*, 2019-OTA-176P.) To establish reasonable cause for a late payment of tax, a taxpayer must show that failure to make a timely payment of the proper amount of tax occurred despite the exercise of ordinary business care and prudence. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.) The reason for missing the deadline must be such that an ordinarily intelligent and prudent businessperson would have acted similarly under the same circumstances. (*Ibid.*)

Reasonable cause may exist if a taxpayer reasonably relies on the substantive advice of an accountant or attorney, even when such advice turned out to have been mistaken. (*U.S. v. Boyle* (1985) 469 U.S. 241, 251.) In *Appeal of Berolzheimer* (86-SBE-172) 1985 WL 22860, the Board of Equalization (BOE) held that a tax professional did not advise the taxpayers on a matter of tax law when they incorrectly estimated their tax liability. The BOE stated, “[a]s this was a simple computational problem, not a legal interpretation, [the taxpayers] cannot hide behind an ‘expert’ for the failure to properly determine the tax that was due.” (See also *Appeal of Curry* (86-SBE-048) 1986 WL 22783.)

Here, it is undisputed that appellant made two untimely payments for the 2021 tax year. The first untimely payment was made on March 18, 2022. Appellant argues that reasonable cause exists to abate the penalty because appellant intended to schedule a timely payment for March 15, 2022, but due to its own clerical error, the payment was scheduled for March 18, 2022, three days after the due date. Appellant contends the first payment was simply a mistake, from which appellant did not realize any advantage. Appellant provides a January 19, 2022 web pay confirmation as evidence that appellant scheduled the March 18, 2022 payment almost two months before the March 15, 2022 due date.

A taxpayer’s failure to timely remit the balance due on a tax liability caused by an oversight does not, by itself, constitute reasonable cause. (*Appeal of Friedman*, 2018-OTA-077P.) Although appellant provides evidence that the payment was scheduled well before the due date, appellant’s failure to confirm the payment was scheduled for the correct date does not show appellant exercised ordinary business care and prudence.

The second untimely payment was made on September 14, 2022. Appellant asserts reasonable cause exists to abate the late payment penalty for the September payment due to reliance on advice received from appellant’s experienced CPA. Appellant contends that an email dated September 9, 2022, “shows that the CPA specifically had [a]ppellant pay approximately \$1.5 million, knowing that [t]his might lead to an underpayment of the tax.” Appellant further states member H “relied on this advice, and made the payment of \$1,505,000 on March 18.” Appellant concludes that since the CPA’s advice was based on full disclosure of

the facts, it was reasonable for appellant to rely on the advice. On appeal, appellant provides a copy of the September 9, 2022 email from the CPA.

The email from appellant's CPA does not support appellant's argument that the late payment of tax was due to reliance on substantive advice from a CPA. On the contrary, the email explained that while appellant originally planned to pay the PTET for member H only, the members could realize additional federal income tax benefits if member W was included in the PTET. The CPA then advised that if appellant included member W in the PTET and made a payment by September 15, 2022, a late payment penalty and interest would be imposed.¹ However, considering the federal tax benefits, the CPA stated "this seems like a good trade."

Based on the evidence in the record, appellant included both members in the PTET upon filing the 2021 return, allowing the members to realize the federal tax benefits of this election, and knowing that it would result in a late payment penalty in California. The CPA's advice to appellant—that the tax benefits to its members of an untimely additional payment of PTET would exceed the late payment penalty and interest imposed by California—is not reliance on substantive tax advice sufficient to establish reasonable cause.

OTA notes the record indicates the CPA materially underestimated the amount of the estimated late payment penalty and interest that the CPA expected FTB to impose. Appellant admits a significant portion of the understatement of the estimate is likely attributable to the March 18, 2022 late payment, of which the CPA was likely unaware. However, the remaining understatement appears to be a mere computational error on the part of the CPA.² A simple computational error is not substantive advice of a tax professional that establishes grounds for reasonable cause. (*Appeal of Berolzheimer, supra.*) As such, appellant has not shown reasonable cause to abate the late payment penalty.

¹ The CPA also informed appellant of the corresponding refund that would result on the members' individual tax return.

² Appellant provides no explanation as to why the CPA's estimate of the late payment penalty associated with the inclusion of member W in the PTET was materially understated.

HOLDING

Appellant has not shown reasonable cause to abate the late payment penalty.

DISPOSITION

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

DocuSigned by:
Susana Seyller
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Hearing Officer

We concur:

Signed by:
Seth Elsom
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Seth Elsom
Hearing Officer

Signed by:
Greg Turner
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Greg Turner
Administrative Law Judge

Date Issued: 5/28/2025