

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
THE RIGGS COMPANY INC.) OTA Case No. 231214943
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OPINION

Representing the Parties:

For Appellant: Maria Riggs, Vice President

For Respondent: Tristen Thalhuber, Attorney

For Office of Tax Appeals: Michelle Huh, Attorney

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, The Riggs Company Inc. (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$1,921.50 for the taxable year ending August 31, 2021 (the taxable year at issue).

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

ISSUES

1. Whether appellant has established reasonable cause for filing its tax return late.
2. Whether appellant has established reasonable cause to abate the demand penalty.
3. Whether appellant has established a legal basis to abate interest.

FACTUAL FINDINGS

1. Appellant did not file a timely tax return (Form 100) for the taxable year at issue. Thus, on April 19, 2023, respondent issued a Demand for Tax Return (Demand), requesting that appellant respond to the Demand by May 24, 2023.
2. When appellant did not respond to the Demand, respondent issued to appellant a Notice of Proposed Assessment (NPA), imposing tax of \$3,895.52, a late filing penalty, and a demand penalty, plus interest.

3. Appellant filed its Form 100 for the taxable year at issue on September 7, 2023, reporting a tax of \$3,843, plus penalties and interest, for a total amount due of \$5,032. Respondent accepted appellant's Form 100, and reduced the amount of tax, penalties, and interest due accordingly.
4. When appellant did not remit the balance due, respondent sent appellant a Notice of Balance Due. Appellant then paid the tax due of \$3,843, and respondent transferred credit balances from appellant's 2018 and 2019 accounts to satisfy the remaining balance due.
5. Appellant filed a claim for refund for the taxable year at issue, which respondent denied.

DISCUSSION

Issue 1: Whether appellant has established reasonable cause for filing its tax return late.

California imposes a penalty for failing to file a return on or before the due date, unless the taxpayer shows that the failure is due to reasonable cause and not due to willful neglect. (R&TC, § 19131(a).) For a taxpayer that is subject to the Corporation Tax Law, the due date to file a return is the 15th day of the fourth month following the close of its taxable year. (R&TC, § 18601(a).) When respondent imposes a late filing penalty, it is presumed to have been correctly imposed, and the burden of proof is on the taxpayer to show that reasonable cause exists to abate the penalty. (*Appeal of Xie*, 2018-OTA-076P.) To overcome the presumption of correctness, the taxpayer must provide credible and competent evidence supporting a claim of reasonable cause. (*Ibid.*) Here, appellant's Form 100 for the taxable year at issue was due on December 15, 2021. Appellant did not file its Form 100 until September 7, 2023. Therefore, respondent properly imposed the late filing penalty. The only issue is whether appellant has established reasonable cause to abate the late filing penalty.

To establish reasonable cause, the taxpayer must show that the failure to file a timely return occurred despite the exercise of ordinary business care and prudence, or that such cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) The taxpayer has a non-delegable obligation to file a tax return by the due date. (*Appeal of Summit Hosting LLC*, 2021-OTA-216P.)

Illness or personal difficulties may be considered reasonable cause if the taxpayer presents credible and competent proof that he or she was continuously prevented from filing a tax return. (*Appeal of Head and Feliciano, supra.*) When a taxpayer alleges reasonable cause based on an incapacity due to illness or the illness of an immediate family member, the duration

of the incapacity must approximate that of the tax obligation deadline. (*Ibid.*) However, if the difficulties simply caused the taxpayer to sacrifice the timeliness of one aspect of their affairs to pursue other aspects, the taxpayer must bear the consequences of that choice. (*Ibid.*) The taxpayer's selective inability to perform tax obligations, while participating in regular business activities, does not establish reasonable cause. (*Ibid.*)

Appellant asserts that its president (R. Riggs) was hospitalized beginning in November 2022 and currently requires oxygen and home care, which prevented appellant from making timely payments despite the exercise of ordinary business care and prudence. In support of its assertion, appellant provides a caregiver report that states R. Riggs was completely disabled due to multiple medical problems and required continuous and constant care from his spouse during the period of January 9, 2023, through March 9, 2023. Appellant also provided invoices establishing that paid caregivers provided ongoing care from November 29, 2022, through December 11, 2022.

Although R. Riggs's medical condition is compelling, his incapacity occurred nearly eleven months after December 15, 2021, the date when appellant's Form 100 was due. R. Riggs's caregiver report shows an incapacity period of two months, from January 9, 2023, to March 9, 2023. That period of incapacity is insufficient to prove reasonable cause. The evidence fails to establish that R. Riggs's period of incapacity extended past March 9, 2023, or that it lasted continuously through September 7, 2023, the date appellant finally filed its Form 100. Furthermore, appellant has not shown that R. Riggs was the only person with authority to act on appellant's behalf. Thus, appellant has not established reasonable cause to abate the late filing penalty.

Issue 2: Whether appellant has established reasonable cause to abate the demand penalty.

California imposes a penalty for the failure to file a return or to provide information upon respondent's notice and demand to do so, unless the failure is due to reasonable cause and not willful neglect. (R&TC, § 19133.) To establish reasonable cause to abate the penalty, a taxpayer's failure to respond to a Demand must be such that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Patient Comfort Services, LLC*, 2021-OTA-300P.)

Here, respondent issued a Demand on April 19, 2023, and provided appellant until May 24, 2023, to respond to the Demand. However, appellant did not respond to the Demand or file its Form 100 until September 7, 2023. Furthermore, as mentioned above, appellant has

not shown that R. Riggs's period of incapacity is sufficient to prove reasonable cause. Thus, appellant has not established reasonable cause to abate the demand penalty.

Issue 3: Whether appellant has established a legal basis to abate interest.

If any amount of the tax is not paid on or before the last date prescribed for payment, interest on that amount is required to be paid from that last date to the date the taxes are paid. (R&TC section 19101(a).) Interest is not a penalty but is compensation for the taxpayer's use of money that should have been paid to the state. (*Appeal of Rougeau*, 2021-OTA-335P.) The imposition of interest is mandatory, and it can only be abated in certain limited situations authorized by law. (*Appeal of Summit Hosting LLC, supra.*) There is no reasonable cause exception to the imposition of interest. (*Ibid.*) To obtain relief from interest, appellant must qualify under R&TC section 19104, 19112, or 21012; however, the Office of Tax Appeals has no authority to review respondent's action under R&TC section 19112. (*Appeal of Moy*, 2019-OTA-057P.)

Here, appellant asserts the same reasonable cause arguments for interest abatement as it did for the late filing penalty. Appellant does not allege, and the record does not show, that there is any basis for interest abatement under R&TC section 19104 or 21012. Thus, appellant has not established any basis to abate interest for the taxable year at issue.

HOLDINGS

1. Appellant has not established reasonable cause for filing its tax return late.
2. Appellant has not established reasonable cause to abate the demand penalty.
3. Appellant has not established a legal basis to abate interest.


DISPOSITION

Respondent's action is sustained.

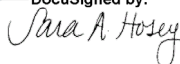
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 Tommy Leung
 Administrative Law Judge

We concur:
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 Suzanne B. Brown
 Administrative Law Judge

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 Sara A. Hosey
 Administrative Law Judge

Date Issued: 6/10/2025