

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:	)	OTA Case No. 250118558
MATTOCKS CREATIONS INC.	)	
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OPINION

Representing the Parties:

For Appellant:	Alyssa Mattocks, Representative
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For Respondent:	John Ly, Attorney
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K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Mattocks Creations Inc. (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$1,239, penalties of \$1,051.58,¹ and, applicable interest for the 2021 tax year.

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 as established reasonable cause for its failure to file a timely return for the 2021 tax year such that the late filing penalties imposed under R&TC 19131 and 19172.5 may be abated.
2. Whether appellant has established a basis for abatement of the demand penalty.
3. Whether appellant has established a basis for abatement of the underpayment of estimated tax penalty.

¹ These penalties include a late filing penalty of \$309.79, a penalty for failure to file upon notice and demand (demand penalty) of \$309.79, and an S Corporation late filing penalty of \$432.

4. Whether appellant has established that FTB did not properly impose the filing enforcement fee.
5. Whether appellant is entitled to interest relief.

FACTUAL FINDINGS

1. Appellant, an S Corporation, did not file a timely California S Corporation Franchise or Income Tax Return (Form 100S) for the 2021 tax year.
2. On February 14, 2024, FTB issued appellant a Demand for Tax Return (Demand), allowing appellant 30 days to file a return or explain why no return was required. FTB did not receive a response to the Demand.
3. On May 13, 2024, FTB issued a Notice of Proposed Assessment (NPA) proposing to assess tax of \$1,239.18. The proposed assessment was based on the average income reported to the IRS for appellant's business category. FTB also imposed a late filing penalty of \$309.79 under R&TC section 19131, an S Corporation late filing penalty of \$432 under R&TC section 19172.5, a demand penalty of \$309.79, a filing of enforcement fee of \$86, and interest.
4. FTB did not receive a response to the NPA and it became final. FTB began collection actions and collected payments totaling \$2,607.40 on August 29, 2024.
5. On August 30, 2024, appellant filed an untimely return reporting \$800 tax. FTB accepted the return as filed. FTB made adjustments to appellant's account, reducing the late filing penalty to \$200, the demand penalty to \$200, and the S Corporation late filing penalty to \$216. FTB also imposed a penalty for the failure to pay estimated taxes (estimated tax penalty) of \$21.96. FTB applied \$1,669.48 of appellant's August 29, 2024 payment, satisfying the liability. FTB transferred the remaining \$937.92 of the August 29, 2024 payment to appellant's account for the 2023 tax year.
6. Appellant filed a claim for refund requesting penalty and interest relief based on reasonable cause. On December 15, 2024, FTB denied appellant's claim for refund.
7. This timely appeal followed.

DISCUSSION

Issue 1: Whether appellant has established reasonable cause for its failure to file a timely return for the 2021 tax year such that the late filing penalties imposed under R&TC sections 19133 and 19172.5 may be abated.

When FTB imposes a penalty, the law presumes that the penalty was imposed correctly, and the burden of proof is on the taxpayer to show that reasonable cause exists to support abating the penalty. (*Appeal of Xie*, 2018-OTA-076P.) R&TC section 19131 imposes a penalty when a taxpayer fails to file a return on or before its due date unless the taxpayer establishes that the late filing was due to reasonable cause and not willful neglect. R&TC section 19172.5 imposes a per-shareholder late-filing penalty on an S Corporation for the failure to file a return on or before the due date, unless it is shown that the late filing is due to reasonable cause. For S Corporations, such as appellant, the due date of its return (without regard to any extension) is the 15th day of the third month following the close of its taxable year. (R&TC, § 18601(d).)

To establish that a failure to act was due to reasonable cause, the taxpayer must show that the failure occurred despite the exercise of ordinary business care and prudence, or that cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of Summit Hosting LLC*, 2021-OTA-216P.) Each taxpayer has a non-delegable obligation to file a tax return by the due date. (*Ibid.*) A taxpayer's reliance on an agent, such as an accountant, to file a return by the due date does not establish reasonable cause. (*Appeal of Fisher*, 2022-OTA-337P.) Asserted lack of documentation or difficulty in calculating a tax liability does not, by itself, constitute reasonable cause. (*Appeal of Moren*, 2019-OTA-176P.)

Here, there is no dispute that appellant failed to file a timely return. As such, FTB properly imposed the late filing penalties. On appeal, appellant asserts that there is reasonable cause because appellant engaged a tax preparation service to file its return but the tax preparer went bankrupt and ceased operations. Appellant asserts that it did not receive any notification of the tax preparation service's closure or that the return was unfiled. However, appellant's assertion does not constitute reasonable cause to support abating the penalty because appellant has a non-delegable duty to file a tax return by the due date. (*Appeal of Fisher, supra.*) Thus, appellant is not entitled to abatement of the late filing penalties.

Issue 2: Whether appellant has established a basis for abatement of the demand penalty.

R&TC section 19133 provides that if a taxpayer fails to make and file a return upon notice and demand by respondent, then respondent may impose a demand penalty unless the taxpayer's failure is due to reasonable cause. The requirements for imposing the demand penalty for the 2021 tax year were satisfied here because FTB issued appellant a February 14, 2024 Demand and did not receive a response. As such, the issue is whether there is reasonable cause for appellant's failure to respond to the Demand.

The burden of proving reasonable cause for failing to file upon demand is on the taxpayer. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) To establish reasonable cause, a taxpayer must show that the failure to timely respond to a demand occurred despite the exercise of ordinary business care. (*Ibid.*) The taxpayer's reason for failing to respond to a demand must be such that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid.*)

On appeal appellant does not provide any explanation for its failure to respond to FTB's Demand. Instead, appellant's asserts that it responded to a collections notice issued in August 2023 by filing a return and making a payment. However, appellant's response to a collections notice is irrelevant to whether appellant timely responded to the Demand. As noted above, FTB did not receive a response within 30 days of issuing the Demand. Appellant has not shown that reasonable cause exists for its failure to respond to the Demand. Thus, OTA concludes that there is no basis to abate the demand penalty.

Issue 3: Whether appellant has established a basis for abatement of the underpayment of estimated tax penalty.

Corporations that are required to pay California franchise tax pursuant to the Corporation Tax Law must make estimated tax payments. (R&TC, §§ 19023, 19025.) When the amount of estimated tax exceeds the minimum franchise tax, then the amount is generally paid in specified installments. (R&TC, § 19025(b).) A corporation that underpays its estimated tax is liable for a penalty equal to a specified rate of interest applied to the amount of the underpayment. (R&TC, §§ 19142(a), 19144.) Relief from the estimated tax penalty is not available based on a showing of reasonable cause. (*Appeal of Weaver Equipment Co.* (80-SBE-048) 1980 WL 4976.)

Here, appellant does not provide any arguments specific to the estimated tax penalty. Instead, the reasonable cause arguments discussed above encompass all of appellant's arguments. OTA notes that there is no general reasonable cause exception for the estimated tax penalty. (*Appeal of Weaver Equipment Co.*, *supra.*) As such, appellant is not entitled to abatement of the estimated tax penalty.

Issue 4: Whether appellant has established that FTB did not properly impose the filing enforcement fee.

FTB shall impose a filing enforcement fee if a taxpayer fails or refuses to file a required tax return within 25 days after FTB mails the taxpayer a formal legal demand to file the tax return. Once properly imposed, the statute provides no grounds, including reasonable cause, upon which the fee may be abated. (R&TC, C, § 19254; see *Appeal of Auburn Old Town*

Gallery, LLC, 2019-OTA-319P.) Therefore, OTA's inquiry is limited to whether FTB complied with the statutory notice requirements for imposing the filing enforcement fee.

Here, FTB issued appellant a Demand notifying appellant that it had a filing requirement for the 2021 tax year, that FTB had no record of appellant's 2021 return, and that FTB would impose a filing enforcement fee for the 2021 tax year if appellant failed to provide a timely response. Appellant did not file a return until August 30, 2024, well after it was required to respond to the Demand. Therefore, FTB properly imposed the filing enforcement fee for the 2021 tax year and there is no legal basis to abate the fee.

Issue 5: Whether appellant is entitled to interest relief.

If any amount of the tax is not paid by the due date, interest is required to be imposed from the due date until the date the taxes are paid. (R&TC, § 19101(a).) Interest is not a penalty but is compensation for the taxpayer's use of money which should have been paid to the state. (*Appeal of Balch*, 2018-OTA-159.) Imposition of interest is mandatory, and it can only be abated in certain limited situations when authorized by law. (R&T C, § 19101(a); *Appeal of Balch, supra*.) There is no reasonable cause exception to the imposition of interest. (*Appeal of Moy*, 2019-OTA-057P.) To obtain relief from interest, appellant must qualify under R&TC sections 19105, 19112, or 21012;² however, based on the evidence and appellant's arguments, none of these statutory provisions apply. Thus, appellant has not established any basis for interest abatement for the tax year at issue.

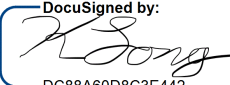
² Note that R&TC section 19112 provides relief from interest for individuals or fiduciaries that demonstrate an inability to pay interest solely because of extreme financial hardship caused by significant disability or other catastrophic circumstance. OTA does not have jurisdiction over FTB's denial of interest abatement pursuant to R&TC section 19112. (*Appeal of Moy, supra*.)

HOLDINGS

1. Appellant has not established reasonable cause for its failure to file a timely return for the 2021 tax year such that the late filing penalties imposed under R&TC 19131 and 19172.5 may be abated.
2. Appellant has not established a basis for abatement of the demand penalty.
3. Appellant has not established a basis for abatement of the estimated tax penalty.
4. Appellant has not established that FTB did not properly impose the filing enforcement fee.
5. Appellant is not entitled to interest relief.

DISPOSITION

FTB's action is sustained.

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Keith T. Long
Administrative Law Judge

Date Issued: 6/19/2025