

In the Matter of the Appeal of:) OTA Case No. 231214976
AIRESPRING, INC.)
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1. Appellant, an S corporation, filed a 2021 California S Corporation Franchise or Income Tax Return on June 3, 2022. The return reported tax of \$39,069 and a pass-through entity elective tax (PTET) of \$337,845.
2. Appellant made estimated tax payments of \$6,000 on April 14, 2021; \$7,000 on June 11, 2021; \$7,000 on August 13, 2021; and \$7,000 on November 18, 2021; and an extension payment of \$12,069 on March 16, 2022, for a total of \$39,069.
3. On June 3, 2022, appellant paid the PTET of \$337,845.

4. FTB imposed a late-payment penalty of \$21,959.93 and an estimated tax penalty of \$244.75.
5. Appellant paid the remaining balance and filed a claim for refund of the penalties.
6. FTB denied appellant's claim for refund, and appellant filed this timely appeal.

DISCUSSION

Issue 1: Has appellant established reasonable cause to abate the late-payment penalty?

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. Generally, the date prescribed for the payment of the tax is the due date of the return (without regard to extensions of time for filing). (R&TC, § 19001.) Similarly, the due date for appellant's payment of the PTET was March 15, 2022, which is the due date of the original return, without regard to any extension of time for filing the return. (R&TC, §§19904(a)(1);18601(d)(1).) Because appellant did not pay the PTET until June 3, 2022, FTB imposed a late-payment penalty of \$21,959.93.

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).) When FTB imposes a penalty, the law presumes that the penalty was imposed correctly, and the taxpayer has the burden of proof to show that reasonable cause exists to support abatement of the penalty. (*Appeal of Red Vision Systems, Inc.*, 2023-OTA-561P.) To establish reasonable cause for the 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. (*Ibid.*) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid.*)

Appellant contends that it has reasonable cause to abate the late-payment penalty based on incorrect advice from both appellant's CPA and its shareholders' CPA that electing the PTET would not benefit its shareholders for the 2021 taxable year. Appellant contends that R&TC section 19900, which allows the PTET election, was passed in July of 2021, and there was uncertainty over the mechanics of the election and payments. Appellant asserts that neither the shareholders' CPA nor the CPA who prepared appellant's tax returns were able to understand the PTET rules. Due to "[n]ew legislation, updates, changes, confusions, [and] clarifications," appellant claims it was unable to gain a clear understanding of the PTET until May 2022. Appellant further contends that its reliance on the advice of the shareholders' CPA

constitutes the exercise of ordinary business care and prudence and that appellant should not be penalized based on the CPA's incorrect advice.

Under some circumstances, taxpayers may reasonably rely on the advice of an accountant or attorney for substantive advice on a matter of tax law, such as whether a liability exists. (*U.S. v. Boyle* (1985) 469 U.S. 241, 252 (*Boyle*); *Appeal of Mazdyasni*, 2018-OTA-049P.) While good faith reliance on professional advice may provide a basis for a reasonable cause defense, it is not absolute. (*Appeal of Summit Hosting LLC*, 2021-OTA-216P.) To establish that reasonable cause exists under *Boyle*, a taxpayer must show that it reasonably relied on substantive tax advice, such as whether a tax liability exists. (*Ibid.*)

Here, appellant was not advised on a matter such as whether a tax liability exists; rather, the shareholders' CPA simply advised appellant not to make an election under the new PTET statute because, in his judgement at the time, the shareholders would not benefit from such election. That advice did not alter appellant's tax liability, which was \$39,069. Only the subsequent decision to elect the PTET required appellant to pay an additional PTET tax of \$337,845. Therefore, it was appellant's change in its tax planning strategy, not its CPA's substantive tax advice, that modified the tax owed. Moreover, FTB, as of December 28, 2021, had posted "Help with pass-through entity elective tax Frequently asked questions" on its website.¹ FTB also issued revised instructions for completion of its Form 3804 (Pass-Through Entity Elective Tax Calculation) in February 2022.

Both publications contained the necessary rules and information to allow an ordinary and prudent businessperson to make a determination of whether it was advisable/beneficial to make the PTE election and pay the PTET prior to the payment deadline of the PTET tax on March 15, 2022. Based on the foregoing, appellant has not established reasonable cause to abate the late-payment penalty.

Issue 2: Has appellant established a basis to abate the estimated tax penalty?

An S corporation is required to pay estimated taxes if its tax liability, as determined by Part 11 of the R&TC commencing with R&TC section 23001, exceeds the minimum tax of \$800 in the amounts of 30 percent of its tax liability on April 15, 40 percent on June 15, 0 percent on September 15, and 30 percent on December 15, all in the current taxable year. (R&TC, §§ 19023, 19025(b).) In the case of underpayment of estimated tax by a corporation under Part 11 of the R&TC, an estimated tax penalty is imposed on the amount of the underpayment

¹ <https://web.archive.org/web/20211228001635/https://www.ftb.ca.gov/file/business/credits/pass-through-entity-elective-tax/help.html>.

for the period of the underpayment. (R&TC, § 19142.) The estimated tax penalty is imposed at the rate established under R&TC section 19521. (R&TC, § 19142(a).) The penalty does not apply to the PTET tax because R&TC section 19900, which applies to the PTET, is found in Part 10.4 of the R&TC. Additionally, there is no extenuating circumstance, reasonable cause, or lack of willful neglect exception for the estimated tax penalty. (*Appeal of Weaver Equipment Co.* (80-SBE-048) 1980 WL 4976.)

Appellant does not dispute that the penalty was properly imposed nor that it was properly calculated.² Instead, appellant contends there are two bases for relief from the penalty. First, appellant points to R&TC section 19142(b)(1), which states that “No addition to tax shall be imposed under this section to the extent that the underpayment was created or increased by any provision of law that is chaptered during and operative for the taxable year of the underpayment.” Appellant claims that since R&TC section 19900 was adopted by the Legislature in July 2021, the same year for which FTB imposed the estimated tax penalty, R&TC section 19142(b)(1) should relieve it of the penalty.

However, the estimated tax penalty was not imposed on appellant’s PTET liability of \$337,845. FTB imposed the penalty on the tax liability as determined by Part 11 of the R&TC: the \$39,069 self-assessed tax reported by appellant on its tax return. Thus, R&TC section 19142(b)(1) does not provide a basis for relief of the estimated tax penalty.

Appellant’s second argument is that California conforms to Internal Revenue Code (IRC) section 6654 through R&TC section 19136, which applies to individuals (not corporations) who underpay estimated taxes. Under IRC section 6654, which also applies to individuals required to pay estimated taxes, appellant contends that the penalty may be relieved if, by reason of casualty, disaster, or other unusual circumstances the imposition of the estimated tax penalty would be against equity and good conscience. (IRC, § 6654(e)(3)(A).) Appellant asserts that the COVID-19 pandemic is a “disaster,” and the implementation of the new PTET constitutes “unusual circumstances.”

First, OTA notes that for purposes of the estimated tax penalty imposed under R&TC section 19142, California does not conform to IRC section 6654, and it does not apply to corporations such as appellant. Furthermore, the exception for unusual circumstances is considerably narrower than reasonable cause. (*Appeal of Mazdayani, supra.*) The IRS has waived the estimated tax penalty in situations where a tax law change, disaster, required accounting method change, or a government action or inaction caused extreme difficulty in

² Appellant does not allege that the limited circumstances set forth in R&TC sections 19147 and 19148 apply to relieve the penalty.

estimating the tax. (*Ibid.*) Here, appellant does not explain how the new PTET law or the COVID-19 pandemic caused it to be unable to accurately estimate its S corporation tax of \$39,069, which is wholly unrelated to the PTET. Therefore, appellant has not established a basis to abate the estimated tax penalty.

HOLDINGS

1. Appellant has not established reasonable cause to abate the late-payment penalty.
2. Appellant has not established a basis to abate the estimated tax penalty.

DISPOSITION

OTA sustains FTB's denial of appellant's claim for refund.

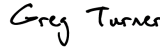
DocuSigned by:

Teresa A. Stanley
Administrative Law Judge

We concur:

Signed by:

Josh Lambert
Administrative Law Judge

Signed by:

Greg Turner
Administrative Law Judge

Date Issued: 7/15/2025