

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
**IMPACT AUTOMATION, INC.** ) OTA Case No. 230312813  
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**OPINION**

Representing the Parties:

For Appellant: Steve Wargo, Manager  
For Respondent: Christopher T. Tuttle, Attorney  
Maria Brosterhaus, Attorney Supervisor

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Impact Automation, Inc. (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$35,696.25 for the 2020 taxable year.

Office of Tax Appeals (OTA) Panel Members Erica Parker, Steven Kim, and Tommy Leung held an electronic hearing for this matter on February 20, 2025. At the conclusion of the hearing, the record was kept open so the parties could submit post-hearing briefs addressing the computations of the tax, late filing penalty, and interest, the increase in the penalty after appellant filed its amended return claiming the R&D tax credit, the delay in determining that appellant owed the additional late filing penalty, and the balance due on appellant’s 2020 account and whether OTA has jurisdiction over such balance. After the post-hearing briefing was completed,<sup>1</sup> the record was closed and this matter was submitted for an opinion.

**ISSUES**

1. Whether the late filing penalty should be abated.
2. Whether interest should be abated.

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<sup>1</sup> Respondent submitted its post-hearing brief; appellant responded by stating: “Facts are in order. Please proceed.”

### FACTUAL FINDINGS

1. Appellant had a government contract with the U.S. Postal Service (USPS) to perform an essential government function in 2020, during COVID-19.
2. Appellant filed a 2020 nonresident group return (Form 540 NR) on behalf of its shareholders on January 15, 2022.
3. Appellant did not fully pay its 2020 taxes timely; thus, respondent issued a Notice of Tax Return Change – Revised Balance, imposing a late filing penalty, plus interest.
4. Respondent issued a State Income Tax Balance Due Notice on September 12, 2022, informing appellant that the remaining balance due for the 2020 taxable year was \$14,883.38. Appellant paid that balance due in full on September 29, 2022.
5. Appellant filed a claim for refund of the late filing penalty and interest based on reasonable cause grounds. Respondent denied the claim for refund, and appellant appealed.
6. During this appeal, the parties agreed that the amount of the late filing penalty is \$37,178.75, and not \$35,696.25.
7. Appellant agreed with respondent's computation of tax as described in respondent's post-hearing brief.

### DISCUSSION

#### Issue 1: Whether the late filing penalty should be abated.

A late filing penalty shall be imposed when a taxpayer fails to file a tax return by either the due date or the extended due date, unless the taxpayer establishes that the late filing was due to reasonable cause and not due to willful neglect. (R&TC, § 19131(a).) The late filing penalty is calculated at 5 percent of the unpaid tax, for each month or a fraction thereof, that the return is late, with a maximum penalty of 25 percent of the tax. (*Ibid.*) When respondent imposes a penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) The taxpayer bears the burden of proving that reasonable cause exists to support an abatement of the penalty. (*Ibid.*; *Appeal of Wright Capital Holdings LLC*, 2019-OTA-219P; *Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.) To establish reasonable cause, the taxpayer must show that the failure to file timely returns 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.) Unsupported assertions are insufficient to satisfy the

taxpayer's burden. (*Appeal of Wright Capital Holdings LLC, supra.*) An oversight does not, by itself, constitute reasonable cause. (*Appeal of Friedman, 2018-OTA-077P.*)

In addition, illness or other personal difficulties do not constitute reasonable cause when the difficulties simply result in the taxpayer sacrificing the timeliness of one matter so that other matters can be pursued. (*Appeal of Halaburka (85-SBE-025) 1985 WL 15809; Appeal of Orr (68-SBE-010) 1968 WL 1640.*) The taxpayer has the burden of proving that the difficulties experienced prevented the taxpayer from complying with his tax obligations. (*Appeal of Myers (2001-SBE-001) 2001 WL 37126924; Appeal of James (83-SBE-009) 1983 WL 15396; see also Stine v. U. S. (Fed.Cl. 2012) 106 Fed.Cl. 586 [requiring "continuous incapacity"]; Appeal of Halaburka, supra [requiring taxpayers to be "continuously prevented" from filing a tax return].*)

During the appeal and at the hearing, appellant's manager explained that he was in California performing the USPS contract in West Sacramento when the 2020 tax return was due, and appellant's CPA had to email appellant's federal, Maryland, and California tax returns to him in order to get the tax returns filed and paid. Although appellant's manager was able to file and pay appellant's federal and Maryland taxes, he inadvertently overlooked the California return. As stated above, the law does not view an oversight or attendance to other matters as reasonable cause for filing a return late. Thus, the late filing penalty cannot be abated.

Issue 2: Whether interest should be abated.

Interest is not a penalty but is merely compensation for a taxpayer's use of money after it should have been paid to the state. (*Appeal of Yamachi (77-SBE-095) 1977 WL 3905.*) There is no reasonable cause exception to the imposition of interest. (*Appeal of Jaegle (76-SBE-070) 1976 WL 4086.*)

To obtain relief from interest, a taxpayer must qualify under one of three statutes: R&TC sections 19104, 19112, or 21012. R&TC section 21012 is not applicable, because there has been no reliance on any written advice requested of respondent. R&TC section 19112 requires a showing of extreme financial hardship caused by significant disability or other catastrophic circumstance. OTA, however, does not have jurisdiction to review respondent's interest abatement determination under R&TC section 19112. (*Appeal of Moy, 2019-OTA-057P.*)

To qualify under R&TC section 19104 (pertaining to unreasonable error or delay by respondent in the performance of a ministerial or managerial act), it must be shown that respondent abused its discretion in denying appellant's claim. (R&TC, § 19104(b)(2)(B).) To show an abuse of discretion, a taxpayer must establish that, in refusing to abate interest,

respondent exercised its discretion arbitrarily, capriciously, or without sound basis in fact or law. (*Appeal of Gorin*, 2020-OTA-018P.)

Respondent initially denied appellant's claimed research and development (R&D) credit of \$94,576 because it was not properly identified.<sup>2</sup> Appellant provided additional documentation in support of the R&D credit and respondent allowed it.<sup>3</sup> Respondent then denied the R&D credit again, stating it was not properly identified.<sup>4</sup> During this appeal, appellant filed an amended return claiming an increased R&D credit of \$113,350, which respondent accepted.<sup>5</sup> The September 12, 2022 notice, which included the allowance of the originally reported R&D credit, computed appellant's late filing penalty of \$35,696.25. Appellant paid the balance due in full as provided in the notice on September 29, 2022. Subsequently, upon accepting the amended return, which increased appellant's R&D credit, the late filing penalty increased to \$37,178.75. In its post-hearing brief, respondent stated that it was "unable to reconstruct the exact underlying calculations for the tax amount showing on [the September 12, 2022] notice." Furthermore, OTA and the parties held a pre-hearing conference on January 27, 2025, during which appellant requested interest computations. Thereafter, respondent was ordered by OTA to provide interest computations to appellant by the day of the hearing. At the hearing, appellant again asked respondent for interest computations, which respondent did not have. While appellant's 2020 tax return was complicated and mistakes were made by both parties, appellant is entitled to an accurate final bill with a clear explanation of the amount of tax due and the interest accrued thereon. Based on the record, appellant made a payment on September 29, 2022, that it reasonably believed satisfied the 2020 balance in full. Under these circumstances, this panel believes that there are no sound bases to deny an abatement of interest from September 29, 2022 (the last day appellant made a payment to respondent) to the present, as throughout this process, appellant has shown a readiness and willingness to pay the tax due when presented with a tax bill. Therefore, interest should be abated starting from September 29, 2022.

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<sup>2</sup> Respondent informed appellant of the disallowance of the credit in the Notice of Tax Return Change – Revised Balance dated February 7, 2022.

<sup>3</sup> Respondent states that the State Income Tax Balance Due Notice dated September 12, 2022, appears to reflect the allowance of appellant's originally claimed R&D credit.

<sup>4</sup> Respondent informed appellant of its decision to revert to the original position and disallow the claimed R&D credit in a Notice of Tax Return Change – Revised Balance dated February 8, 2023.

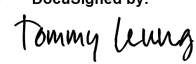
<sup>5</sup> The only change on the amended return was to increase the reported R&D credit. The reported total tax remained unchanged.

HOLDINGS

1. The late filing penalty should not be abated.
2. Interest should be abated from September 29, 2022, to the present.

DISPOSITION

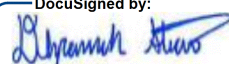
Interest should be abated from September 29, 2022; in all other respects, respondent's action is sustained.

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Tommy Leung  
 Administrative Law Judge

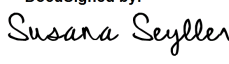
We concur:

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For

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Steven Kim  
 Administrative Law Judge

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For

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Erica Parker  
 Hearing Officer

Date Issued: 8/7/2025