

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:	)	OTA Case No. 230513439
KCG, INC.	)	
	)	
	)	
	)	

OPINION

Representing the Parties:

For Appellant:	Rick Najjar, Representative Jennine Brazell, Representative Robert Johnson, Representative
For Respondent:	Alisa L. Pinarbasi, Attorney

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, KCG, Inc. (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant's claim for refund of \$20,585.69¹ for the 2021 taxable year.

While an oral hearing was originally scheduled for May 22, 2025, appellant subsequently waived its appearance; therefore, this matter is being decided based on the written record.

ISSUES

1. Whether the late payment penalty should be abated.
2. Whether the estimated tax penalty should be abated.
3. Whether interest should be abated.

FACTUAL FINDINGS

1. Appellant, an S corporation, filed its 2021 California tax return (Form 100S) on September 7, 2022. On its 2021 Form 100S, appellant made a pass-through entity tax (PTET) election.
2. Appellant untimely paid the balance due on its 2021 Form 100S on September 14, 2022.

¹ Per respondent's submission dated May 29, 2025, as requested by OTA during the parties' pre-hearing conference.

3. Respondent then imposed late payment and estimated tax penalties, plus interest, which appellant paid on December 21, 2022. Appellant filed a refund claim for both penalties as well as interest, which respondent denied.

DISCUSSION

Issue 1: Whether the late payment penalty should be abated.

A late payment penalty is imposed when a taxpayer fails to pay the amount shown on the return by the date prescribed for the payment of tax. (R&TC, § 19132(a).) Generally, the date prescribed for the payment of the tax is the due date of the return, without regard to any extension of time for filing the return. (R&TC, § 19001.) For an S corporation, such as appellant, the due date of its return, without regard to any extension, and the date prescribed for payment of the tax, is the 15th day of the third month following the close of its taxable year. (R&TC, § 18601(d).)

For taxable years beginning on or after January 1, 2021, and before January 1, 2026, a qualified entity may elect to pay the PTET. (R&TC, § 19900(a)(1).) The PTET is equal to 9.3 percent of “qualified net income,” which means the sum of the pro rata share or distributive share of income, and any guaranteed payments described by Section 707(c) of the Internal Revenue Code. (R&TC, § 19900(a)(2).) For 2021, payment of the PTET is also due on or before the due date of the original return (without regard to any extension of time for filing) for the taxable year of the PTET election. (R&TC, § 19904(a)(1).)

Appellant was required to pay the PTET by March 15, 2022,² but did not do so. There is no dispute that respondent properly computed and imposed the late payment penalty. However, appellant argues there is reasonable cause to abate the late payment penalty. The late payment penalty may be abated where the failure to make a timely payment was due to reasonable cause and not willful neglect. (R&TC, § 19132(a)(1).) To establish reasonable cause, the taxpayer must show that the failure to timely pay occurred despite the exercise of ordinary business care and prudence. (*Appeal of Scanlon*, 2018-OTA-075P.)

Respondent’s determination is presumed to be correct, and the taxpayer has the burden of proving otherwise. (*Appeal of Davis and Hunter-Davis*, 2020-OTA-182P.) Unsupported assertions are not sufficient to satisfy a taxpayer’s burden of proof. (*Ibid.*) In the absence of credible, competent, and relevant evidence showing error, respondent’s determinations must be upheld. (*Ibid.*) The burden of proof requires proof by a preponderance of the evidence.

² See R&TC, § 18601(d). Appellant filed its Form 100S based on a calendar year and, thus, appellant’s 2021 tax return was due on March 15, 2022.

(Cal. Code Regs., tit. 18, § 30219(b).) The law provides that taxpayers have a non-delegable obligation to pay their taxes by the due date; thus, a taxpayer's reliance on an agent, such as an accountant, to pay by the due date is not reasonable cause. (See *U.S. v. Boyle* (1985) 469 U.S. 241, 252; *Appeal of Summit Hosting LLC*, 2021-OTA-216P.)

Appellant contends there was reasonable cause for the late payment due to the complexity of the newly enacted PTET. However, R&TC section 19904(a)(1) clearly provides the due date of the PTET payment and is unambiguous in that regard. While appellant points to the February 9, 2022 amendments to the PTET law as the cause for its late payment of tax, the PTET was actually enacted in July 2021.³ Appellant also argues that prior to the February 9, 2022 amendments to the PTET law, taxpayers that had a partnership as a partner did not qualify to make the PTET election, but it has not provided a detailed explanation or other corroborating evidence to explain how this complicated the computation of the PTET so much as to cause its remittance more than five months late. Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of Scanlon, supra.*) Accordingly, appellant has not demonstrated reasonable cause for its late payment of tax.

Appellant also seeks first time abatement relief. California law provides for a one-time abatement of a timeliness penalty for individual taxpayers who are subject to the personal income tax. (R&TC, § 19132.5(a).) The one-time abatement does not apply to corporate taxpayers, and the statute only applies to requests for abatement made for taxable years beginning on or after January 1, 2022. (See R&TC, § 19132.5(b), (f).) Although the IRS administers a program called "First Time Abate," in which the IRS may administratively abate the late payment penalty if taxpayers have timely filed returns and paid taxes due for the past three years, neither the California Legislature nor respondent has adopted a comparable program for corporate taxpayers for the 2021 taxable year. Hence, the late payment penalty cannot be abated.

Issue 2: Whether the estimated tax penalty should be abated.

Corporations that are required to pay California franchise tax pursuant to the Corporation Tax Law⁴ must make estimated tax payments. (R&TC, §§ 19023, 19025(a).) 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

³ See Stats. 2021, Ch. 82, § 15.

⁴ In California, S corporations are required to pay a 1.5 percent entity-level tax. (See R&TC, § 23802(b)(1).)

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.) An estimated tax penalty is properly imposed where the taxpayer's installment payments are less than the amounts due at the end of the installment periods. (*Appeal of Bechtel, Inc.* (78-SBE-052) 1978 WL 3525.) 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.) There are a few limited statutory exceptions to the estimated tax penalty. (See R&TC, §§ 19147, 19148.)

Here, the record shows that respondent imposed the estimated tax penalty on the S corporation tax, not the PTET, and appellant did not dispute the calculation of the estimated tax penalty. Rather, appellant argues that the penalty should be abated based on reasonable cause (due to the February 9, 2022 amendments to the PTET law) or under a first-time abatement, as described above. However, the estimated tax penalty was imposed on the underpayment of appellant's quarterly installment payments (which were not impacted by the February 9, 2022 legislation), and there is no reasonable cause exception to the estimated tax penalty. (See *Appeal of Scanlon, supra.*) Moreover, R&TC section 19132.5 does not apply to the estimated tax penalty, or to corporate taxpayers, or to penalties imposed for taxable years prior to 2022. Because appellant does not argue or provide evidence that one of the limited statutory exceptions to the estimated tax penalty applies, respondent properly imposed the estimated tax penalty, and appellant is not entitled to abatement of the penalty.

Issue 3: Whether interest should be abated.

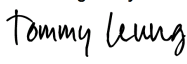
The imposition of interest is mandatory and accrues on a tax deficiency regardless of the reason for the underpayment. (R&TC, § 19101(a); *Appeal of Balch*, 2018-OTA-159P.) There is no reasonable cause exception to the imposition of interest. (*Appeal of Moy*, 2019-OTA-057P.) Therefore, to obtain interest relief, appellant must qualify under R&TC section 19104 (pertaining to unreasonable error or delay by respondent in the performance of a ministerial or managerial act), section 19112 (only applicable to individuals and pertaining to extreme financial hardship caused by significant disability or other catastrophic circumstance), or section 21012 (pertaining to reasonable reliance on the written advice of respondent). (*Ibid.*) Appellant did not allege, and the record does not reflect, that any of these waiver provisions are applicable here. Therefore, there is no basis for abating interest.

HOLDINGS

1. The late payment penalty should not be abated.
2. The estimated tax penalty should not be abated.
3. Interest should not be abated.

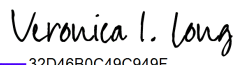
DISPOSITION

Respondent's action is sustained.

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Tommy Leung
Administrative Law Judge

We concur:

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Veronica I. Long
Administrative Law Judge

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Kenneth Gast
Administrative Law Judge

Date Issued: 7/15/2025