

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
LC ENGINEERING GROUP, INC.) OTA Case No. 240817054
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OPINION¹

Representing the Parties:

For Appellant: Michael P. Kelly, CPA

For Respondent: Tristen Thalhuber, Attorney

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, LC Engineering Group, Inc. (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$4,151.33 for the 2022 taxable year.

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. Has appellant established reasonable cause to abate the late-payment penalty?
2. Has appellant established a basis to abate or waive the underpayment of estimated tax penalty (estimated tax penalty)?

¹ Appellant’s reply brief filed with the Office of Tax Appeals (OTA) mistakes the Franchise Tax Board’s opening brief for a “ruling” by OTA. This Opinion constitutes OTA’s decision in this matter.

FACTUAL FINDINGS

1. On November 10, 2023, appellant filed a timely 2022 California S Corporation Franchise or Income Tax Return, reporting tax of \$17,964 and a pass-through entity elective tax (PTET) of \$111,377.²
2. Appellant made an estimated tax payment of \$32,500 on June 17, 2022; PTET payments of \$6,407 on September 14, 2022, and \$38,906 on March 7, 2023; a bill payment of \$51,528 on May 7, 2024; and a final bill payment of \$6,020.92 on June 21, 2024, to satisfy the late-payment penalty, the estimated tax penalty, and applicable interest.
3. FTB imposed a late-payment penalty of \$4,122.24 and an estimated tax penalty of \$29.09.
4. Appellant filed a Reasonable Cause – Business Entity Claim for Refund with FTB requesting abatement of the penalties alleging reasonable cause due to reliance on incorrect advice from its tax professional regarding the PTET payment due date.
5. 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.) For the 2022 taxable year, the PTET was due in two installments: (1) on or before June 15th of the current taxable year, here June 15, 2022, taxpayers must pay an amount equal to or greater than the either 50 percent of the prior year's PTET or \$1,000, whichever is greater; and (2) on or before the due date for the return, here March 15, 2023, taxpayers must pay the remaining PTET balance. (R&TC, §§19904(a)(2);18601(d)(2).) Because appellant did not fully pay its PTET until May 7, 2024, FTB imposed a late-payment penalty of \$4,122.24.

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 properly imposed, and the taxpayer has the burden of proof to show reasonable cause to abate the

² Due to the 2023 California winter storms, the filing deadline was extended to November 16, 2023. (See IRS Notices CA-2023-01, CA-2023-02.)

penalty. (*Appeal of Red Vision Systems, Inc.*, 2023-OTA-561P.) To establish reasonable cause for the late payment of tax, the 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 does not dispute that the penalty was properly calculated. Instead, appellant contends that it has reasonable cause to abate the late-payment penalty based on incorrect advice from its CPA. In support, appellant submits a statement from its CPA indicating that appellant sent financial statements to its CPA, and the CPA used them to determine that appellant would benefit from the PTET election. The CPA, in an email to appellant, stated “the [PTET] deposit can be made any time, and is based on our best estimate. The nature of these deposits is unclear, as the tax is new. We assume it will be treated like any other estimated tax payment, and only after filing, will the FTB unravel it all[.] Pay when you can.” Appellant asserts reasonable cause to abate the late-payment penalty based on that 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, 251 (*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 a tax professional for substantive tax advice as to whether a tax liability exists and that the following conditions are met: (1) the person relied on by the taxpayer is a tax professional with competency in the subject tax law; and (2) the tax professional’s advice is based on the taxpayer’s full disclosure of relevant facts and documents. (*Ibid.*)

Here, appellant has not established that it reasonably relied on a tax professional for *substantive* advice. The substantive advice provided by the CPA was that it would benefit appellant to elect the PTET and that appellant needed to pay the PTET to FTB. However, it requires no special training or effort to ascertain a deadline and make sure that it is met, and a taxpayer has a personal obligation to meet tax deadlines. (*Boyle, supra*, at p. 251-252; *Appeal of Rougeau*, 2021-OTA-335.) The due date for appellant’s payment of tax and for final payment of its PTET was March 15, 2023. (R&TC, §§ 19904(a)(2); 18601(d)(1).) An ordinarily intelligent and prudent businessperson would have researched the correct due date for payment of a new elective tax. The due dates set forth in R&TC section 19104(a)(2) are clear and unambiguous.

Appellant fails to establish reasonable cause based on its CPA incorrectly advising it on a non-substantive issue of when to pay the tax.

Issue 2: Has appellant established a basis to abate or waive 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 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, 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.)

Appellant makes no specific arguments with respect to the estimated tax penalty. Moreover, the estimated tax penalty was imposed because appellant failed to timely pay 30 percent of its S corporation tax of \$17,964 on April 15, 2022, and 40 percent on June 15, 2022, as required by R&TC section 19025.³ Furthermore, even if appellant relied on its CPA for advice with respect to estimated tax payments, relief of that penalty is not available based on reasonable cause. (*Appeal of Weaver Equipment Co., supra.*) Therefore, appellant has not established a basis to abate the estimated tax penalty.

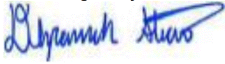
³ Appellant made an estimated tax payment of \$32,500 on June 17, 2022. While this payment amount exceeded the S corporation tax of \$17,964 reported on appellant's return, this payment was made after the first two estimated tax payment due dates of April 15, 2022, and June 15, 2022.

HOLDINGS


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

DISPOSITION

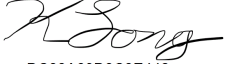
OTA sustains FTB's action denying appellant's claim for refund.

DocuSigned by:

 _____ For
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 Teresa A. Stanley
 Administrative Law Judge

We concur:

Signed by:


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 Kim Wilson
 Hearing Officer

DocuSigned by:


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 Keith T. Long
 Administrative Law Judge

Date Issued: 7/29/2025