

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
**SABRA SELLERS REAL ESTATE INC.** ) OTA Case No. 231114828  
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**OPINION**

Representing the Parties:

For Appellant: Sabra Gandhi, President

For Respondent: Ariana Macedo, Graduate Legal Assistant

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Sabra Sellers Real Estate Inc. (appellant) appeals actions by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$977.99<sup>1</sup> for the 2021 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 the underpayment of estimated tax penalty (estimated tax penalty)?

**FACTUAL FINDINGS**

1. Appellant filed a timely California S Corporation Franchise or Income Tax Return on September 15, 2022. The return reported tax of \$2,857, pass-through entity tax (PTET) of \$17,714, total tax of \$20,571, payments of \$10,800, and tax due of \$9,771.
2. Based on the reported tax of \$2,857, appellant’s required estimated tax payments were \$857.10 due on April 15, 2021, \$1,142.80 due on June 15, 2021, \$0 due on

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<sup>1</sup> The claim for refund includes penalties of \$815.23 plus interest. Appellant does not raise any arguments with respect to interest, and this Opinion does not separately address it.

- September 15, 2021, and \$857.10 due on December 15, 2021. Appellant paid estimated tax of \$800 on March 3, 2021, and \$10,000 on December 31, 2021.
3. Appellant made two payments on September 15, 2022, satisfying the remaining tax due of \$9,771 reported on appellant's tax return.
  4. FTB imposed a late-payment penalty of \$781.68 and an estimated tax penalty of \$33.55 plus applicable interest. Appellant paid \$977.99 on April 18, 2023, satisfying the balance due for penalties and interest.
  5. Appellant requested a refund of the penalties and interest claiming reasonable cause for the late payments.
  6. FTB denied appellant's claim for refund of the late-payment penalty and the estimated tax penalty.
  7. Appellant timely appealed both denials.

### 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 tax 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 taxable year 2021, 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).) The late-payment penalty has two parts. The first part is 5 percent of the unpaid tax. (R&TC, § 19132(a)(2)(A).) The second part is a penalty of 0.5 percent per month, or portion of a month (not to exceed 40 months), calculated on the outstanding balance. (R&TC, § 19132(a)(2)(B).) When FTB imposes a penalty, the law presumes that the penalty was imposed correctly, and the taxpayer bears the burden of proof to establish otherwise. (*Appeal of Xie*, 2018-OTA-076P.)

The late-payment penalty may be abated when a 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).) To establish reasonable cause for the late payment of tax, a taxpayer must show that failure to make a timely payment of the proper amount of tax occurred despite the exercise of ordinary business care and prudence. (*Appeal of Moren*, 2019-OTA-176P.) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid.*)

Appellant asserts that it does not understand how FTB calculated the penalties. Appellant further contends that it had reasonable cause for its late payments because it was the first year that a PTET election could be made, and appellant contacted FTB to get an explanation of how to make a PTET election and pay the tax. Appellant asserts that it believed that the PTET election allowed it to pay *up to* 9.3 percent of appellant's net income, not that it needed to pay 9.3 percent of appellant's net income by the original payment due date on March 15, 2022.

Appellant paid tax due of \$9,771 six months late on September 15, 2022. FTB correctly calculated a late-payment penalty of \$781.68 ( $(\$9,771 \times .05) + (\$9,771 \times .005 \times 6 \text{ months})$ ). Thus, the burden is on appellant to prove that it acted prudently under the circumstances.

It is accurate that 2021 was the first taxable year for which a PTET election could be made. However, OTA's record does not reflect that appellant specifically requested information from FTB regarding the amount required to be paid by the original due date for the return. Moreover, the 2021 Instructions for Form FTB 3804 Pass-Through Entity Elective Tax Calculation expressly states that an electing pass-through entity *shall* pay 9.3 percent of the qualified net income for the taxable year for which the election is made. It does not provide that an amount less than 9.3 percent may be elected. A reasonably prudent businessperson would have carefully read the instructions when making the election in the first year it was available. Appellant did not act prudently when it used its own understanding that the election allowed it to pay an amount less than 9.3 percent of its qualified net income. Thus, appellant is not entitled to abatement of the late-payment penalty based on reasonable cause.

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

An S Corporation, such as appellant, 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 because R&TC section 19900, which creates the PTET, is found in Part 10.4 of the R&TC. Thus, FTB applied the penalty only to the tax of \$2,857 reported on appellant's tax return. 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.)

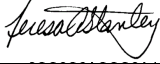
Appellant made the same arguments with respect to the estimated tax penalty as it did with respect to the late-payment penalty. Regarding the calculation of the estimated tax penalty of \$33.55, FTB’s opening brief includes exhibit K, which contains a detailed calculation of the estimated tax penalty. The remainder of appellant’s assertions constitute reasonable cause arguments, and even if OTA were to find reasonable cause for the late estimated tax payments, the penalty may not be abated on that basis. Appellant has not presented a basis upon which to abate the estimated tax penalty.

HOLDINGS

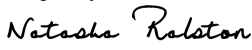
1. Appellant has not established reasonable cause to abate the late-payment penalty.
2. Appellant has not established a basis to abate the estimated tax penalty.


DISPOSITION

OTA sustains FTB’s actions denying appellant’s claims for refund.

DocuSigned by:  
  
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 Teresa A. Stanley  
 Administrative Law Judge

We concur:

Signed by:  
  
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 Natasha Ralston  
 Administrative Law Judge

DocuSigned by:  
  
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 John O. Johnson  
 Administrative Law Judge

Date Issued: 8/6/2025