

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 240115248
DEUTSCHE BANK SECURITIES INC.)
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OPINION

Representing the Parties:

For Appellant: Kelly Roche, Assistant Vice President

For Respondent: Topher Tuttle, Attorney

For Office of Tax Appeals: John Yusin, Attorney

L. KATAGIHARA, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19331, Deutsche Bank Securities Inc. (appellant) appeals from the Franchise Tax Board’s (respondent’s) deemed denial of appellant’s claim for refund of \$308,111.51 for the 2021 tax 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. Whether appellant has shown reasonable cause to abate the remaining late payment penalty.
2. Whether appellant is entitled to abatement of the underpayment of estimated tax penalty (estimated tax penalty).

FACTUAL FINDINGS

1. Appellant's affiliate, Deutsche Bank New York Branch (DBNY), was under examination by the IRS for the 2017 and 2018 tax years. DBNY agreed with the IRS' determination that DBNY's hedging transactions (used to hedge fixed-rate debt instruments) were improperly reported using the mark-to-market method of accounting rather than the accrual method of accounting.
2. In or around July 2022, DBNY agreed to make the appropriate adjustments to its federal returns for the 2017 and 2018 tax years, and to carry forward the adjustments to the 2019 through 2022 tax years.¹ With respect to the 2021 tax year, the adjustments resulted in the reversal of a loss of \$624,882,849. Appellant states that this additional income increased appellant's pre-apportioned California income.
3. On November 14, 2022, appellant filed its California Corporation Franchise or Income Tax Return – Water's-Edge Filers (California return) for the tax year ending December 31, 2021.² On the California return, appellant reported California tax of \$7,766,341, total payments of \$5,589,935 (\$2,289,935 representing an overpayment from a prior year allowed as a credit, and \$3,300,000 paid with appellant's extension of time to file (extension payment)), and tax due of \$2,176,406.
4. On November 30, 2022, appellant remitted the reported tax due.
5. Respondent imposed a late payment penalty of \$196,233.16,³ an estimated tax penalty of \$111,878.35, and applicable interest.
6. On May 8, 2023, appellant paid \$356,484.84 to respondent.⁴

¹ Appellant asserts DBNY signed the agreement on August 1, 2022, but the agreement only reflects dates in July.

² The original due date of appellant's California return was April 15, 2022. (R&TC, § 18601(a).) However, respondent provides an automatic seven-month extension for qualifying taxpayers to file their tax returns, which extended appellant's deadline to file to November 15, 2022. (R&TC, § 18604(a); FTB Notice 2019-17 [<https://www.ftb.ca.gov/tax-pros/law/ftb-notices/2019-07.pdf>].)

³ Respondent initially imposed a late payment penalty of \$230,167.02 based on an initial credit of \$1,963,359 from an overpayment of tax for the prior tax year, but the credit amount was subsequently increased by \$323,475, which reduced the late payment penalty.

⁴ Appellant notes that it was unaware respondent imposed the penalties until it received a notice from respondent dated April 24, 2023. Respondent has not provided evidence that it provided notice prior to that date. In any event, the date appellant was informed of or paid the penalties does not impact OTA's analysis in this appeal.

7. On May 9, 2023, appellant filed a claim for refund for \$308,111.51.⁵
8. Respondent continued to demand payment from appellant for unpaid interest and fees (which appellant ultimately paid in full), but failed to act on appellant's claim for refund.⁶
9. On January 26, 2024, appellant filed this timely appeal pursuant to California Code of Regulations, title 18, section 30203(a)(9).
10. On appeal, respondent concedes to a \$77.53 reduction of the late payment penalty (from \$196,233.16 to \$196,155.63).

DISCUSSION

Issue 1: Whether appellant has established reasonable cause to abate the remaining 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. 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 2021 tax year, the original filing and payment due date was April 15, 2022 (see R&TC, § 18601(a)), but appellant did not pay the balance of its tax liability (i.e., the \$2,176,406) until November 30, 2022. Therefore, respondent properly imposed the late payment penalty.

A late payment penalty may be abated if the taxpayer can show that the failure to make a timely payment of tax was due to reasonable cause and not due to willful neglect. (R&TC, § 19132(a)(1).) To establish reasonable cause for the late payment of tax, the taxpayer must show, by a preponderance of the evidence, that the failure to make a timely payment of the proper amount of tax occurred despite the exercise of ordinary business care and prudence. (*Appeal of Rougeau*, 2021-OTA-335P.) Reasonable cause must exist not only at the time payment of the tax became due but must continue to exist until actual payment is remitted. (*Appeal of Moren*, 2019-OTA-176P.) An acceptable reason for a taxpayer's failure to pay taxes will excuse such failure only so long as the reason remains valid. (*Ibid.*)

Appellant argues that it had reasonable cause for its failure to make a timely payment of

⁵ The amount of appellant's claim for refund is equal to the amount of the late payment penalty (\$196,233.16) and the estimated tax penalty (\$111,878.35) combined.

⁶ Appellant's claim for refund only pertains to the late payment and estimated tax penalties. Therefore, respondent's imposition of interest and fees is not at issue and will not be discussed further.

tax because at the time payment was due, appellant believed a prior year's overpayment would sufficiently cover its 2021 tax liability. Appellant further contends that it did not know, until after the extension payment was due, that its hedging transaction adjustments and/or the increase in its California apportionment percentage would result in additional taxes being due.

The record shows that in July 2022, appellant knew or had reason to know that DBNY's adjustments resulting from the IRS examination would impact appellant's California income, but appellant has provided no explanation as to why it waited until November 2022, to file its California return and remit payment of the taxes due. Furthermore, appellant filed its California return on November 14, 2022, reporting \$2,176,406 as the tax due, so appellant unequivocally knew the amount of its tax liability by that date. For reasons unexplained, however, appellant did not make its payment until November 30, 2022. Appellant makes no arguments, and provides no evidence, to support a finding of reasonable cause for its failure to pay the tax between November 14, 2022, and November 30, 2022. Because reasonable cause must exist until payment is remitted (*Appeal of Moren, supra*), it is unnecessary for OTA to determine whether the IRS examination or the purported credits from the prior tax year constitute reasonable cause for appellant's failure to fully pay its tax liability between April 15, 2022 (when payment was due), and July 2022. Accordingly, OTA finds that appellant has not established reasonable cause to abate the late payment penalty.

Issue 2: Whether appellant is entitled to abatement of the estimated tax penalty.

Corporations that are required to pay California franchise tax pursuant to the Corporation Tax Law must make estimated tax payments. (R&TC, §§ 19023, 19025.) 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 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.) Relief from the estimated tax penalty is not available based on a showing of reasonable cause.⁷ (*Appeal of Weaver Equipment Co.*, (80-SBE-048) 1980 WL 4976.)

Appellant does not dispute that it was required to pay estimated taxes. Nor does appellant dispute respondent's computation of the estimated tax penalty. Instead, appellant

⁷ There are statutory exceptions to the imposition of the estimated tax penalty (see e.g., R&TC, §§ 19142(b), 19147, 19148), but appellant does not argue, and the evidence does not show, that any of the exceptions apply here.

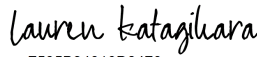
argues that the estimated tax penalty should be abated for the same reasonable cause arguments discussed above. However, there is no general reasonable cause exception for the estimated tax penalty. (*Appeal of Weaver Equipment Co., supra.*) As such, appellant is not entitled to abatement of the estimated tax penalty.

HOLDINGS


1. Appellant has not shown reasonable cause to abate the remaining late payment penalty.
2. Appellant is not entitled to abatement of the estimated tax penalty.


DISPOSITION

Respondent’s deemed denial of appellant’s claim for refund is modified pursuant to its concession to reduce the late payment penalty by \$77.53, but is otherwise sustained.

Signed by:

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 Lauren Katagihara
 Administrative Law Judge

We concur:

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 Erica Parker
 Hearing Officer

DocuSigned by:

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 Sheriene Anne Ridenour
 Administrative Law Judge

Date Issued: 4/25/2025