

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
SECURITY PUBLIC STORAGE –)
VACAVILLE II LLC)
)
)
)
)

OPINION

Representing the Parties:

For Appellant: Reva Tembe, CPA
For Respondent: David C. Cortez,
Associate Governmental Program Analyst

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Security Public Storage - Vacaville II LLC (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$1,239.68 for the 2023 taxable year.

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single panel member. (Cal. Code Regs., tit. 18, § 30209.05(b).) 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).

ISSUE¹

Has appellant established reasonable cause to abate the late-payment penalty?

FACTUAL FINDINGS

1. Appellant, a California limited liability company, filed a timely 2023 tax return reporting total tax and fee of \$26,920 (including a pass-through entity elective tax (PTET) of \$20,120), payments of \$36,033, and an overpayment of \$9,113.

¹ The claim for refund is for a late-payment penalty of \$853.57 plus applicable interest of \$386.11. Appellant makes no arguments with respect to abatement or waiver of interest, so this Opinion does not separately address interest.

2. FTB issued a Limited Liability Company – Notice of Balance Due (notice) correcting the amount of payments to \$16,878 paid by appellant for 2023. The notice imposed a late-payment penalty of \$853.57, plus interest of \$386.11.
3. Appellant paid the balance due on September 17, 2024, and requested that FTB abate the late-payment penalty for reasonable cause.
4. FTB denied appellant's claim for refund.
5. This timely appeal followed.

DISCUSSION

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. The dates prescribed for the payment of the PTET for taxable year 2023 were: (1) on or before June 15 of the current taxable year an amount equal to or greater than 50 percent of the PTET paid the prior taxable year or \$1,000, whichever is greater; and (2) the remaining PTET balance on or before the due date for the return. (R&TC, § 19904(a)(2).) The date prescribed for filing the 2023 tax return was March 15, 2024. (R&TC, § 18633.5(a).) Here, appellant did not fully satisfy the PTET until September 17, 2024; therefore, FTB properly imposed the late-payment penalty.

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).) To establish reasonable cause for a late payment of tax, a taxpayer must show that the failure to make a timely payment occurred despite the exercise of ordinary business care and prudence. (*Appeal of Scanlon*, 2018-OTA-075P). The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Triple Crown Baseball*, 2019-OTA-025P.) As to appellant's burden, the applicable standard of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(b).) To meet this evidentiary standard, a party must establish by documentation or other evidence that the circumstances it asserts are more likely than not to be correct. (*Appeal of Rougeau*, 2021-OTA-335P.)

Appellant contends that the late-payment penalty should be abated because it relied on a letter from its tax preparer stating that appellant was owed a refund.² Appellant explains that its tax preparer mistakenly included in its calculation of payments for 2023, a PTET payment of \$19,155, which was made on March 15, 2023, for the 2022 taxable year. Appellant also asserts

² The letter is not in OTA's record.

that it acted reasonably by filing its tax return on time and having a good history of timely paying its tax obligations.

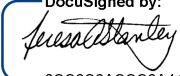
Appellant's actions here do not show that appellant exercised ordinary business care and prudence. The letter upon which appellant relied may have stated that there was an overpayment of tax, rather than an underpayment, but appellant's tax preparer attached that letter to a copy of appellant's tax return. There is no evidence that appellant reviewed the tax return and compared the totals on the return with its own payment records. Instead, appellant appears to have relied on a letter rather than on a review of the tax return and its payment records. While it is true that "[m]ost taxpayers are not competent to discern error in the substantive advice of an accountant or attorney," as stated in *U.S. v. Boyle* (1985) 469 U.S. 241, 251, the letter sent by appellant's tax preparer does not constitute substantive advice. It merely reflects a clerical error that could have been corrected by appellant after a brief review of its own payment records. Moreover, to the extent appellant is arguing that it is entitled to abatement of the penalty due to a good history of timely compliance with past tax obligations, R&TC section 19132.5 provides for a one-time abatement of some timeliness penalties for taxpayers with a good history of meeting tax obligations; however, the provision applies only to individuals and not to entities such as appellant. (See R&TC, § 19132.5(a).)

HOLDING

Appellant has not established reasonable cause to abate the late-payment penalty.

DISPOSITION

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

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Teresa A. Stanley
Administrative Law Judge

Date Issued: 8/25/2025