

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
MARA MANAGEMENT, LLC) OTA Case No. 240917440
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OPINION

Representing the Parties:

For Appellant: Neil Beeman, CPA
Gabriel Faix-Hernandez, Representative

For Respondent: Vivian Ho, Attorney

A. VASSIGH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Mara Management, LLC (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$2,616¹ for the 2022 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).

ISSUE

Whether appellant established that it is entitled to abatement of the late filing penalties imposed under R&TC sections 19131 and 19172.5.

FACTUAL FINDINGS

1. Appellant, an S corporation, was required to file a California S Corporation Franchise or Income Tax Return (Form 100S) for tax year 2022 by March 15, 2023, or by the extended due date of November 16, 2023.

¹ This amount includes a per-shareholder late filing penalty in the amount of \$72 and a late filing penalty, which FTB revised during the course of this appeal, from \$22,410 to \$2,544, based on untimely paid tax liability of \$12,720. The remaining \$19,866 will be refunded to appellant at the close of this appeal, and interest will be adjusted accordingly.

2. Appellant filed its 2022 S Corporation California tax return on February 28, 2024. Appellant reported a total payment that did not match the payments shown in FTB's records.
3. FTB accepted appellant's return and notified appellant that it had a remaining balance due, and imposed a late filing penalty and a per-shareholder late filing penalty. FTB imposed the two late filing penalties pursuant to R&TC sections 19131 and 19172.5, respectively.
4. Appellant subsequently made a payment which fully satisfied the amount due for 2022.
5. W. Mara, who was appellant's sole shareholder during 2022, passed away in January 2023. J. Mara then became appellant's owner.
6. On June 3, 2024, FTB received appellant's reasonable cause claim for refund which requested abatement of the assessed late filing penalties and interest.
7. On August 5, 2024, FTB issued a Notice of Action denying appellant's request.
8. Appellant then filed this timely appeal.
9. During this appeal, appellant explained that the return preparer requested more information of J. Mara, and that J. Mara searched from May to October of 2023 for this information.

DISCUSSION

For tax year 2022, an S corporation was originally required to file its tax return on or before the 15th day of the third month following the close of its tax year. (R&TC, § 18601(a).) R&TC section 18604 allows FTB to grant a reasonable extension of time for the filing of a corporate return. FTB allowed an extension until November 16, 2023 for the filing and payment of taxes for taxpayers located in appellant's county.² The R&TC contains two penalties that are applicable to late-filed subchapter S corporation returns.

The first penalty, under R&TC section 19131, is computed with reference to the amount of the corporation's tax shown on the return. The penalty is five (5) percent of the amount of tax required to be shown on the return for every month that the return is late, without any regard to extensions of time for filing, up to a maximum of 25 percent. (R&TC, § 19131(a).) The second penalty, under R&TC section 19172.5, considers the fact that a subchapter S corporation is a pass-through entity. The penalty is based upon the number of its pass-through shareholders

² See www.ftb.ca.gov/about-ftb/newsroom/news-releases/2023-10-due-date-for-tax-returns-payments-moved.html.

and the lateness of the return. FTB imposed the late filing penalties pursuant to R&TC sections 19131 and 19172.5.

Appellant does not protest the calculation of the penalties but asserts that they should be abated based upon reasonable cause. The late filing penalty under R&TC section 19131 will be abated if it is established that the late filing was attributable to reasonable cause and not willful neglect. (R&TC, § 19131(a).) The late filing penalty under R&TC section 19172.5 will be abated if the taxpayer establishes that the late filing was attributable to reasonable cause.³ (R&TC, § 19172.5(a).) Because FTB does not assert willful neglect, the only issue is whether appellant has demonstrated reasonable cause for the late filing of its 2022 tax return.

To establish reasonable cause, the taxpayer must show that the failure to file a timely tax return occurred despite the exercise of ordinary business care and prudence, or that cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) A late filing penalty imposed by FTB is presumed to be correct, and the burden of proof is on the taxpayer to establish that reasonable cause exists to support an abatement of the penalty. (*Appeal of Xie*, 2018-OTA-076P.)

Here, appellant argues that it has established reasonable cause on the basis of the following contentions: Appellant's sole shareholder, W. Mara was ill for several years when his health deteriorated suddenly in late 2022 and he passed away on January 15, 2023; W. Mara's wife, J. Mara, then took over the company; appellant had no employees and there was no one available with the knowledge and ability to continue ordinary business activities; and J. Mara acted diligently and took steps to file the tax return immediately upon learning that the filing deadline had passed.

The crux of appellant's contention is it exercised ordinary business care and prudence because J. Mara filed the company's California tax return when she learned it was due. However, the failure to timely file a tax return due to an oversight or mistake, by itself, does not constitute reasonable cause. (*Appeal of Auburn Old Town Gallery, LLC*, 2019-OTA-319P; see *Appeal of Moren*, 2019-OTA-176P [lack of documentation or difficulty in calculating a tax liability does not, by itself, constitute reasonable cause].) Similarly, it is well settled that a taxpayer's reliance on an agent, such as an accountant, to file a return by the due date is not reasonable cause because a taxpayer has a personal, non-delegable obligation to meet statutory deadlines. (*Appeal of Quality Tax & Financial Services, Inc.*, 2018-OTA-130P, citing *U.S. v Boyle* (1985)

³ Showing a lack of willful neglect is not required to abate the R&TC section 19172.5 per-partner, late filing penalty.

469 U.S. 241, 252.) Appellant does not explain what prevented J. Mara, during the ten months between W. Mara's passing and the extended due date of the tax return, from inquiring about appellant's tax obligations and filing the tax return during this period. During this period, it appears that J. Mara was able to maintain appellant's business activity, appellant paid business expenses and J. Mara received income from appellant. Appellant was able to engage in business operations yet its tax obligations were not addressed until after the due date. During this appeal, appellant had explained that the return preparer requested more information of J. Mara, and that J. Mara searched from May to October of 2023 for this information. Appellant does not explain what information J. Mara was searching for, or what caused the delay in filing appellant's return from October of 2023 until February 28, 2024.

Appellant points to a nonprecedential U.S. Tax Court case as an example of when a taxpayer's incapacity to continue his business affairs constituted reasonable cause to abate late filing penalties. (*Tracy v. Commissioner*, T.C. Summ. Op. 2023-20.) In that case, the taxpayer, who was elderly and closing down his law practice, "had systems in place to ensure tax compliance." (*Ibid.*) The taxpayer was unable to meet his tax obligations timely "because of his poor health and advanced age," but it was the previously effective systems he had put into place that constituted reasonable cause. (*Ibid.*) Appellant has not provided any information on steps that it implemented during the years W. Mara was ill to prepare for his potential or eventual inability to manage appellant's business affairs.

Accordingly, appellant has not proven that the late filing of its 2022 tax return was due to reasonable cause and therefore appellant is not entitled to abate the late filing penalty imposed under R&TC section 19131 or the per-shareholder late filing penalty imposed under R&TC section 19172.5.

HOLDING

Appellant has not shown reasonable cause to abate the late filing penalties imposed under R&TC sections 19131 and 19172.5.

DISPOSITION

FTB's action, as revised during this appeal to reduce the late filing penalty under R&TC section 19131 from \$22,410 to \$2,544, is sustained.

DocuSigned by:
Amanda Vassigh
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Amanda Vassigh
Administrative Law Judge

We concur:

DocuSigned by:
Sara A. Hosey
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Sara A. Hosey
Administrative Law Judge

Signed by:
Veronica I. Long
32D46B8C49C949F...
Veronica I. Long
Administrative Law Judge

Date Issued: 1/28/2026