OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **INFINITY WELLNESS INSTITUTE INC.**	OTA Case No. 250419201

OPINION

Representing the Parties:

For Appellant: Isabella Lai, President

For Respondent: David C. Cortez, Associate Government Program Analyst

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Infinity Wellness Institute Inc. (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant's claim for refund of $3,815.57[1] for the 2023 tax 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).

ISSUES

1. Whether appellant has shown reasonable cause for the late payment of tax.
2. Whether the penalty for underpayment of estimated tax (estimated tax penalty) can be waived or abated.

[1] The claim for refund consists of a late payment penalty of $2,481.36, an underpayment of estimated tax penalty of $98.28, and applicable interest of $1,235.93, for a total of $3,815.57. Appellant did not include self-assessed penalties and interest of $340 in its claim for refund of $3,475.57.

On appeal, FTB concedes that it miscalculated the underpayment of estimated tax penalty, which should be $97.67, and states that it will refund $0.61 at the conclusion of this appeal.

3. Whether appellant is entitled to interest abatement.

FACTUAL FINDINGS

1. Appellant is a California S Corporation.
2. Appellant made the following estimated tax payments for the 2023 tax year: on April 18, 2023, a first quarter (1Q) payment of $1,179; on June 15, 2023, a 2Q payment of $1,572; on December 15, 2023, a 4Q payment of $1,179; and on March 15, 2024, an extension payment of $276.
3. Appellant made the following pass-through entity (PTE) elective tax payments: on June 15, 2023, a payment of $12,180, on March 15, 2024, a payment of $13,895, and on September 16, 2024, a payment of $26,709.
4. On September 16, 2024, appellant timely filed a 2023 Form 100S, California S Corporation Franchise or Income Tax Return, within the extension period. Appellant reported a tax balance of $8,514, a PTE elective tax of $52,784, total tax of $61,298, total payments of $56,990, a franchise or income tax liability of $4,308, an estimated tax penalty of $202, and a total amount due of $4,648, which appellant paid with the return.
5. FTB processed the return and imposed a late payment penalty of $2,481.36, an estimated tax penalty of $98.28, and applicable interest.
6. Appellant paid the balance due and filed a timely claim for refund that requested abatement of penalties imposed and applicable interest.
7. On April 3, 2025, FTB issued letters denying appellant's claim for refund of the late payment and estimated tax penalties, plus applicable interest.
8. This timely appeal followed.

DISCUSSION

Issue 1: Whether appellant has shown reasonable cause for the late payment of tax.

R&TC section 19132(a) 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. Taxpayers may elect to annually pay the PTE elective tax under Part 10.4 of the R&TC. (R&TC, § 19904(a)(1).) Here, appellant reported a PTE elective tax of $52,784 but paid only $26,075 by

March 15, 2024.[2] FTB imposed the late payment penalty because appellant failed to pay the second required installment of PTE elective tax payments by the March 15, 2024 deadline.[3]

On September 16, 2024, appellant untimely paid the remaining PTE elective tax of $27,709. Appellant does not dispute that FTB properly imposed or computed the late payment penalty. Rather, appellant asserts reasonable cause exists to abate the late payment penalty.

The late payment penalty will be abated if the taxpayer shows the failure to make a timely payment of tax was due to reasonable cause and not due to willful neglect.[4] (R&TC, § 19132(a)(1).) To establish reasonable cause for the late payment of tax, a taxpayer must demonstrate 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 Triple Crown Baseball LLC*, 2019-OTA-025P.) The reason for missing the deadline must be such that an ordinarily intelligent and prudent businessperson would have acted similarly under the same circumstances. (*Ibid*.)

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 asserts that: (1) it hired a new tax preparer for the 2023 tax year, (2) provided the tax preparer with all information requested by the tax preparer, (3) its tax preparer miscalculated the required payments, and (4) appellant, in good faith, trusted the tax preparer's professional advice. A taxpayer's reliance on an agent, by itself, is not reasonable cause for the failure to comply with an unambiguous statute. (*Appeal of Summit Hosting LLC*, 2021-OTA-216P, citing *U.S. v. Boyle* (1985) 469 U.S. 241, 251 (*Boyle*).) However, reasonable cause may exist if a taxpayer reasonably relies on the advice of an accountant or attorney with respect to substantive matters of tax law. (*Appeal of Summit Hosting LLC*, *supra*; *Boyle*, *supra*, 469 U.S. at pp. 250-251.)

To establish reasonable cause based on reliance on a professional, a taxpayer must show that it reasonably relied on the professional for substantive tax advice as to whether a tax

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[2] $26,075 is the sum of the first required installment of $12,180, which appellant timely paid, and appellant's payment of $13,895 on March 15, 2024.

[3] The second installment was due on or before the due date of the original return without regard to any extension of time for filing, for the tax year of the PTE elective tax election; the amount due was the PTE elective tax amount minus the first required installment. (R&TC, § 19904(a)(2)(B).) For the 2023 tax year, March 15, 2024, was the due date to file an S corporation return. (See R&TC, § 18601(d)(1)).)

[4] Only reasonable cause is at issue.

liability exists and 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. (*Boyle*, *supra*, 469 U.S. at pp. 250-251.) By contrast, reliance on an expert cannot function as a substitute for compliance with an unambiguous statute. (*Id*. at p. 251.) In *Appeal of Berolzheimer* (86-SBE-172) 1986 WL 22860, OTA's predecessor found no basis in the record for concluding that the taxpayers' agent, a New York Law firm, had expertise in California tax law and therefore declined to hold, as a matter of law, that relying on an out-of-state law firm constituted reasonable cause for failing to comply with California's tax law.

Here, appellant's tax preparer was based in Tennessee and nothing in the record shows that the tax preparer had expertise in California tax law. (See *Appeal of Berolzheimer*, *supra*.) Moreover, while appellant purportedly trusted the tax preparer's expertise, appellant asserts that its tax preparer miscalculated the required payments. Thus, appellant fails to establish that it relied on substantive tax advice. (See *Appeal of Rougeau*, *supra*.) Even if appellant could establish that it reasonably relied on substantive tax advice, appellant acknowledges that its preparer did not request or have access to needed information. Thus, appellant fails to meet its burden to show that it provided a full disclosure of relevant facts and documents to the tax preparer. (See *ibid*.)

Appellant claims that it relied on its tax preparer in good faith, that as soon as appellant became aware of the error, appellant promptly paid the balance due, and that appellant has since implemented additional oversight to prevent future occurrences of late payment. However, appellant concedes that the failure to timely pay the tax due was caused by the professional oversight of its tax preparer and provides no evidence that the oversight occurred despite appellant's exercise of ordinary business care and prudence. (See *Appeal of Triple Crown Baseball LLC*, *supra*.) Moreover, a taxpayer's failure to remit the balance due on a tax liability caused by an oversight does not, by itself, constitute reasonable cause. (*Appeal of Friedman*, 2018-OTA-077P.) Appellant should have exercised due diligence by reviewing the tax preparer's calculations to ensure the tax preparer used the proper figures and made the correct calculations. While this appeal presents no evidence of willful neglect, appellant fails to establish that it had reasonable cause for the failure to timely pay its tax liability.

Appellant further asserts that the penalty should be abated because it has a good compliance history. However, a history of compliance, by itself, does not constitute reasonable cause.[5] (*Appeal of Moren*, 2019-OTA-176P.) As described above, appellant must show reasonable cause to abate the late payment penalty. (*Appeal of Triple Crown Baseball LLC*, *supra*.) Therefore, no relief is available on this basis.

Finally, appellant argues that it is a physician's office providing service to California, and that the penalty is out of proportion to the mistake. However, OTA may only abate the late payment penalty for reasonable cause. (*Appeal of Triple Crown Baseball LLC*, *supra*.) Because appellant fails to show reasonable cause, the late payment penalty may not be abated.

Issue 2: Whether the estimated tax penalty can be waived or abated.

An S corporation subject to the corporation tax imposed by Part 11 of the R&TC must file a declaration of estimated tax and pay the estimated tax for each year. (R&TC, §§ 19023, 19025.) The estimated tax is equal to the greater of either: (1) the estimated tax imposed by Part 11 on the corporation and the sum of the tax liabilities of each wholly owned subsidiary under R&TC section 23800.5, or (2) the minimum franchise tax. (R&TC, § 19023.) If the amount of estimated tax does not exceed the minimum franchise tax, the entire amount of the estimated tax shall be due and payable on or before the fifteenth day of the fourth month of the taxable year. (R&TC, § 19025(a).) If the estimated tax exceeds the minimum franchise tax before the first day of the fourth month of the taxable year, the amount payable is generally due in the following installments: 30 percent on the 15th day of the fourth month of the taxable year, 40 percent on the 15th day of the six month of the taxable year, and 30 percent on the 12th month of the taxable year. (R&TC, § 19025(b).)

An S corporation that underpays its estimated tax is penalized by an addition to tax equal to a specified rate of interest applied to the amount of the underpayment unless a statutory exception applies. (R&TC, §§ 19142, 19144, 19147, & 19148.) An estimated tax penalty is properly imposed where the taxpayer's installment payments are less than the amounts due at the end of the installment periods. (*Appeal of Bechtel, Inc*. (78-SBE-052) 1978 WL 3525.) There is no reasonable cause exception to the imposition of the underpayment of estimated tax penalty. (*Appeal of Weaver Equipment Co.* (80-SBE-048) 1980 WL 4976.)

For the 2023 tax year, appellant reported a tax balance, which excluded PTE elective tax, of $8,514.[6] In response to the severe California winter storms, pursuant to R&TC

[5] R&TC section 19132.5 allows for a one-time abatement of a timeliness penalty, such as the late payment penalty, for individual taxpayers for tax years beginning on or after January 1, 2022. However, appellant is an S Corporation, not an individual, and does not qualify for abatement.

[6] The PTE elective tax is imposed under Part 10.4, not Part 11, of the R&TC. Therefore, estimated tax liabilities exclude the PTE elective tax liability.

section 18572(b), FTB postponed the deadline for California individuals and businesses in affected counties to perform time-sensitive actions, including paying the 1Q and 2Q estimated tax payments to November 16, 2023.[7] Appellant underpaid the 2Q and 4Q installments of estimated tax. Thus, FTB properly imposed an estimated tax penalty on the underpayments.

There is no dispute that, as modified on appeal, respondent properly imposed and computed the estimated tax penalty. Here, appellant asserts the same reasonable cause arguments as with the late payment penalty above, to abate the estimated tax penalty. However, there is no general reasonable cause exception to the imposition of the estimated tax penalty. (*Appeal of Weaver Equipment Co.*, *supra*.) Moreover, appellant does not argue, and a review of the record does not illustrate, that any statutory exception applies to the imposition of the estimated tax penalty. Therefore, the estimated tax penalty cannot be waived or abated.

<u>Issue 3: Whether appellant is entitled to interest abatement.</u>

The imposition of interest is mandatory and accrues on a tax deficiency regardless of the reason for the underpayment. (R&TC, § 19101(a); *Appeal of Balch*, 2018-OTA-159P.) Interest is not a penalty; it is compensation for the taxpayer's use of money. (*Appeal of Balch*, *supra*.) There is no reasonable cause exception to the imposition of interest. (*Ibid*.)

To obtain interest relief, appellant must qualify under the waiver provisions of R&TC section 19104 (pertaining to unreasonable error or delay by respondent in the performance of a ministerial or managerial act), or section 21012 (pertaining to reasonable reliance on FTB's written advice). Appellant does not allege, and the record does not reflect, that either waiver provision is applicable here. Therefore, appellant is not entitled to interest abatement.

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[7] See https://www.ftb.ca.gov/file/when-to-file/california-severe-winter-storms.html; see also *Appeal of Pomrehn*, 2025-OTA-269P.

HOLDINGS

1. Appellant has not shown reasonable cause for the late payment of tax.
2. The estimated tax penalty cannot be waived or abated.
3. Appellant is not entitled to interest abatement.

DISPOSITION

FTB's action is modified to reduce the estimated tax penalty to $97.67, as conceded by FTB on appeal. FTB agrees to refund appellant $0.61. FTB's action denying appellant's claim for refund is otherwise sustained.

DocuSigned by:
Asaf Kletter
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Asaf Kletter
Administrative Law Judge

Date Issued: 5/5/2026