

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
2021 INC.

) OTA Case No. 230212691
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)
)

OPINION

Representing the Parties:

For Appellant:

N. Schaedler, President

For Respondent:

Andrea Watkins, Attorney

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, 2021 Inc. (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant's claims for refund of \$691.39 for the 2018 tax year and \$697.23 for the 2020 tax year¹.

Office of Tax Appeals (OTA) Panel Members Seth Elsom, John O. Johnson, and Keith T. Long held a virtual oral hearing for this matter on April 16, 2026.² At the conclusion of the

¹ Appellant's claim for refund for the 2018 tax year includes amounts paid of \$200 for a late filing penalty, \$432 for a per-shareholder late filing penalty, an estimated tax penalty of \$30.90, and accrued interest of \$19.38. Appellant's claim for refund for the 2020 tax year includes amounts paid of \$200 for a late filing penalty, \$432 for a per-shareholder late filing penalty, an estimated tax penalty of \$23.34, accrued interest of \$19.38, and additional payments of \$31.

² This hearing was originally scheduled for May 19, 2025. However, OTA postponed the originally scheduled hearing at appellant's request for reasons unrelated to this appeal. OTA subsequently scheduled a hearing for November 20, 2025, which OTA also postponed at appellant's request for reasons unrelated to this appeal. At that time, OTA informed appellant that further postponements may not be granted without a showing of good cause, pursuant to California Code of Regulations, title 18, section 30220(b).

On January 29, 2026, OTA issued a hearing notice notifying appellant of the April 16, 2026 hearing. Appellant timely requested a third postponement. However, OTA found that there was no indication that appellant's unrelated matters would resolve in the foreseeable future. OTA noted appellant's concession that the reasons for postponement had "nothing to do with this case." Additionally, appellant did not provide any evidence that other matters would prevent it from appearing at the hearing. As such, OTA denied appellant's third postponement request based on a failure to show good cause.

hearing, the record was closed, and this matter was submitted for an opinion pursuant to California Code of Regulations, title 18, section 30209(b).

ISSUES

1. Whether appellant has established reasonable cause for the late filing of its returns for the 2018 and 2020 tax years.³
2. Whether appellant is entitled to abatement of the estimated tax penalties for the 2018 and 2020 tax years.
3. Whether appellant is entitled to interest abatement.

FACTUAL FINDINGS

2018 Tax Year

1. Appellant, an S corporation with two shareholders, did not file a timely California S Corporation Franchise or Income Tax Return (return) for the 2018 tax year. However, on April 15, 2019, FTB received a payment of \$831 attributable to appellant's account for the 2018 tax year.
2. On September 15, 2020, appellant filed an untimely return for the 2018 tax year self-assessing the minimum franchise tax of \$800 and an estimated tax penalty of \$31.
3. FTB applied appellant's April 15, 2019, payment to appellant's return, and imposed a late filing penalty of \$200, a per-shareholder late filing penalty of \$432, and applicable interest. Otherwise, FTB accepted appellant's return as filed.
4. On April 27, 2021, FTB received a payment of \$660.59, satisfying the liability.
5. Appellant filed a timely claim for refund requesting abatement of penalties and interest based on reasonable cause.
6. FTB did not respond to appellant's claim for refund. However, there is no dispute that the six-month period to respond has lapsed and appellant's claim for refund is deemed to be denied.⁴

³ At the oral hearing, OTA defined the issues in this appeal as "whether appellant is entitled to abatement of the late filing penalties for the 2018 and 2020 tax years," "whether appellant is entitled to abatement of the 'per-shareholder' late filing penalties imposed under R&TC section 19172.5 for the 2018 and 2020 tax years," and "whether appellant is entitled to abatement of penalties based on federal action." For the purposes of this Opinion, OTA has combined these three issues.

⁴ Pursuant to R&TC section 19331, the refund claim is deemed denied because FTB did not issue a Notice of Action on the refund claim within six months.

2020 Tax Year

7. On July 19, 2022, appellant filed an untimely return for the 2020 tax year self-assessing the minimum franchise tax of \$800 and an estimated tax penalty of \$23. Appellant did not remit payment with the return. However, on July 21, 2022, appellant made a payment of \$800.
8. FTB applied appellant's July 21, 2022, payment to appellant's account for the 2020 tax year, and imposed a late filing penalty of \$200, a per-shareholder late filing penalty of \$432, and applicable interest. Otherwise, FTB accepted appellant's return as filed.
9. Appellant filed a timely claim for refund requesting abatement of penalties and interest based on reasonable cause.
10. On November 23, 2022, FTB issued a letter denying appellant's claim for refund for the 2020 tax year in the amount of \$632.
11. This timely appeal followed with respect to the 2018 and 2020 tax years.

DISCUSSIONIssue 1: Whether appellant has established reasonable cause for the late filing of its returns for the 2018 and 2020 tax years.

S corporations, such as appellant, are required to file a return on or before the 15th day of the third month following the close of its taxable year. (R&TC, § 18601(d).)

R&TC section 19131 imposes a penalty when a taxpayer fails to file a return on or before its due date unless the taxpayer establishes that the late filing was due to reasonable cause and not willful neglect. The late filing penalty is calculated at 5 percent of the tax due, for each month or fraction thereof, that the tax return is not filed, with a maximum penalty amount of 25 percent of the tax. (R&TC, § 19131.)

In addition, R&TC section 19172.5 provides that if any S corporation fails to file a return within the time prescribed, then the S corporation shall be liable for a per-shareholder penalty determined for each month during which the failure to file continues, not to exceed 12 months. (R&TC, § 19172.5(a).) The penalty is determined by the product of \$18 multiplied by the number of shareholders. (R&TC, § 19172.5(b).)

When FTB imposes a penalty, there is a rebuttable presumption that the penalty was properly imposed. (*Appeal of Xie*, 2018-OTA-076P.) To overcome the presumption a taxpayer must provide credible and competent evidence supporting a claim of reasonable cause. (*Appeal of Xie*, *supra*.) To establish reasonable cause, the taxpayer must show that the failure to file timely returns 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 Auburn Old Town Gallery, LLC*, 2019-OTA-319P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.)

Here, the original due dates for appellant's returns were March 15, 2019, and March 15, 2021, respectively. For 2018, appellant did not file a return until September 15, 2020, which is 18 months after the return's due date. For 2020, appellant did not file a return until July 19, 2022, which is 16 months after the return's due date. Because appellant failed to file timely returns, FTB imposed the late filing penalty. As stated above, the late filing penalty is calculated by adding 5 percent to the tax for each month that the return is late. (R&TC § 19131(a).) The penalty may not exceed 25 percent of the tax and therefore the maximum penalty is reached five months after the return's due date. (See *Ibid.*) In each case, appellant's returns were not filed for more than one year after the returns' original due dates. Accordingly, FTB calculated the maximum penalty of \$200 (25 percent of the \$800 due) for each tax year. FTB also calculated the maximum per-shareholder late filing penalty of \$432 ($\$18 \times 2 \text{ shareholders} \times 12 \text{ months}$).

On appeal, there is no dispute that appellant failed to file timely returns for the 2018 and 2020 tax years. Instead, appellant contends that the late filing penalty is calculated improperly. Appellant argues that it received refunds and had zero tax liability during the 2018 and 2020 tax years. Appellant relies on the negative net income reported on line 20 of its returns to support the proposition that it had no tax liability. Nevertheless, OTA notes that S corporations, like appellant, are subject to the minimum franchise tax. (See R&TC, §§ 23153(a), 23802(c).) Thus, even though appellant reported negative income for the 2018 and 2020 tax years it still incurred tax liabilities. Indeed, appellant self-assessed the minimum franchise tax and appellant's returns reflect an amount due of \$800. There is no evidence that appellant received refunds for either of the years at issue. Appellant has not provided any evidence that the penalties were calculated improperly. As such, OTA finds that the late filing penalties under R&TC sections 19131 and 19172.5 were properly imposed.

Appellant also argues that there is reasonable cause for its failure to file timely returns such that the penalties should be abated. First, appellant asserts that it was prevented from filing timely returns due to difficulties with its books and records. For example, appellant contends that it transitioned between payroll companies during 2018, and the newly hired payroll company made bookkeeping errors. Appellant contends that the bookkeeping errors were prevalent through 2020. Appellant also asserts that its bank account was abruptly closed

during 2020, which caused appellant to lose access to its books and records. Appellant asserts that it chose to wait until the bookkeeping issues were resolved rather than filing a timely, but incorrect, return under the penalty of perjury.

Next, appellant contends that it was forced to change tax preparation services for the 2018 tax year due to the death of an accountant. Appellant states that it informed the new accountant that its books were inaccurate. Appellant asserts that, in response, the accountant stated that despite the bookkeeping issues, appellant was receiving a refund for the 2018 and 2020 tax years. Based on this advice, appellant states that it did not prioritize filing its returns.

Appellant also contends that personal difficulties prevented it from filing timely returns. Appellant asserts that a tenant died on the Northern California property of appellant's sole officer and employee, which created problems to which she needed to attend. Appellant concedes that its employee worked remotely during this time but asserts that books and records were left behind and prevented the filing of a return. Appellant also contends, generally, that it was impacted by the COVID-19 pandemic.

Bookkeeping Issues

At the oral hearing, appellant provided testimony from its representative, N. Schaedler, regarding the payroll and other bookkeeping issues. As part of her testimony, Ms. Schaedler stated that she knew the returns would be incorrect and did not want to commit perjury by filing them. Nevertheless, OTA has previously held that difficulty obtaining information does not constitute reasonable cause for the late filing of a return. (*Appeal of Xie, supra.*) Indeed, the law required appellant to file a timely return for each year with whatever information was available and then file an amended return later if necessary. (See *Ibid.*) Accordingly, OTA finds that appellant has not established reasonable cause based on this contention.

Accountant Advice

In *U.S. v. Boyle* (1985) 469 U.S. 241, 252 (*Boyle*), the U.S. Supreme Court held that "the failure to make a timely filing of a tax return is not excused by the [taxpayers'] reliance on an agent, and such reliance is not 'reasonable cause' for a late filing" The Court noted that one does not need to be a tax expert to know that tax returns have fixed filing dates and taxes must be paid when due. (*Id.* at p. 251.) The fact that a tax preparer was expected to attend to a matter does not relieve a taxpayer of the duty to comply with the statute. (*Appeal of Fisher*, 2022-OTA-337P.) However, reasonable cause may be found when a taxpayer relies on substantive advice from an accountant or attorney on a matter of tax law, such as whether a liability exists. (*Boyle, supra*, 469 U.S. at p. 251). California follows *Boyle* in that a taxpayer's

reliance on a tax advisor must involve reliance on substantive tax advice and not simple clerical duties. (*Appeal of Mauritzon*, 2021-OTA-198P.)

As discussed above, appellant asserts that it hired a new accountant, explained the bookkeeping issues, and was informed that it would be receiving a refund for 2018 and 2020. However, reasonable cause is not found to the extent that appellant relied on its accountant in the decision to file a late return. (See *Boyle, supra*, 469 U.S. at p. 252.) Accordingly, OTA finds no merit in this contention.

Personal Difficulties

Personal difficulties may be considered reasonable cause if the taxpayer presents credible and competent proof that they were continuously prevented from fulfilling tax obligations. (See *Appeal of Head and Feliciano*, 2020-OTA-127P.) However, if the difficulties simply caused the taxpayer to sacrifice the timeliness of one aspect of their affairs to pursue other aspects, the taxpayer must bear the consequences of that choice. (*Ibid.*) The taxpayer's selective inability to perform tax obligations, while participating in regular business activities, does not establish reasonable cause. (*Ibid.*)

On appeal, appellant contends that personal difficulties related to the death of a tenant and COVID-19 prevented it from filing a return for the 2020 tax year. Ms. Schaedler testified that she "was dealing with a whole bunch of stuff." Appellant contends that, while dealing with the tenant death, Ms. Schaedler traveled to Northern California and worked remotely after leaving the necessary tax information behind. Appellant's claim for refund provides further context, stating that appellant knew it was owed a refund. However, as discussed above, appellant was mistaken with respect to whether there was a liability for the 2020 tax year. Appellant's mistaken belief that it was owed a refund and would not incur late filing penalties does not establish reasonable cause for the failure to timely file its returns. As to appellant's tenant, OTA acknowledges the difficulty that Ms. Schaedler must have gone through. However, appellant's choice to pursue other aspects of its affairs does not establish reasonable cause for the failure to file timely returns. (See *Appeal of Head and Feliciano, supra*.)

Federal Action

Finally, appellant contends that the IRS relieved similar penalties that were imposed on appellant's federal account for the 2018 and 2020 tax years. In support of this contention, appellant provided a notice of refund issued by the IRS for the 2020 tax year.⁵ On the other

⁵ Appellant provided an exhibit index stating that the notice provided is for a refund of penalties for the 2018 tax year.

hand, FTB does not dispute that the IRS relieved appellant's penalties. Instead, FTB asserts that the federal penalties were not relieved based on reasonable cause. In support, FTB provided copies of appellant's Federal Account Transcripts for the 2018 and 2020 tax years. According to the Federal Account Transcripts, the IRS relieved a late filing penalty for 2018 as part of its first-time penalty abatement program. For 2020, the IRS made an administrative waiver of the late-filing penalty. There are no provisions in the Revenue and Taxation Code which would allow FTB to relieve the penalty for these reasons.⁶

Even if the IRS abated the late-filing penalty based on a showing of reasonable cause, OTA is not bound to follow a federal determination when its own analysis reaches a different conclusion. (*Appeal of Der Wienerschnitzel International, Inc.* (76-SBE-063) 1979 WL 4104.) Therefore, appellant is not entitled to penalty relief based on the federal action.

Conclusion

In summary, appellant has not established reasonable cause for its failure to file timely returns. As such, OTA finds no basis to abate the late filing penalties under R&TC sections 19131 and 19172.5 based on these contentions.

Issue 2: Whether appellant is entitled to abatement of the estimated tax penalties for the 2018 and 2020 tax years.

Corporations that are required to pay California franchise tax pursuant to the Corporation Tax Law must make estimated tax payments. (R&TC, §§ 19023, 19025(a).) 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 underpayment. (R&TC, §§ 19142(a), 19144.) Absent limited exceptions, 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 extenuating circumstance, reasonable cause, or lack of willful neglect exception for the estimated tax penalty. (*Appeal of Weaver Equipment Co.* (80-SBE-048) 1980 WL 4976.)

On appeal, appellant contends, without evidence, that it made estimated tax payments for the 2018 and 2020 tax years. However, the record reflects only the following payments: a September 15, 2020, payment of the minimum franchise tax for the 2018 tax year; and a

⁶ R&TC section 19132.5 provides for a one-time abatement of certain timeliness penalties but only for individual taxpayers with good tax compliance history for tax years beginning on or after January 1, 2022, which is after the tax years at issue.

July 21, 2022, payment of the minimum franchise tax for the 2020 tax year. In each case, appellant's payments were made well after the due date of the return.⁷ Therefore, appellant properly self-assessed the estimated tax penalty. Appellant's arguments with respect to the estimated tax penalty are the same reasonable cause arguments discussed above. However, there is no reasonable cause exception to the estimated tax penalty. (*Appeal of Weaver Equipment Co., supra.*)⁸

Issue 3: Whether appellant is entitled to interest abatement

Tax is due on the original due date of the return without regard to any filing extension. (R&TC, § 19001.) If a taxpayer does not pay the tax by the original due date of the tax return, or if FTB assesses additional tax, the law provides for charging interest on the balance due. (R&TC, § 19101.) Imposition of interest is mandatory; it is not a penalty, but it is compensation for a taxpayer's use of money after it should have been paid to the state. (*Appeal of Patient Comfort Services, LLC, 2021-OTA-057P.*)⁹

In this case, appellant only provides reasonable cause type arguments for the abatement of interest. However, there is no reasonable cause exception to the imposition of interest. (*Appeal of Patient Comfort Services, LLC, supra.*) Appellant is not entitled to interest abatement.

⁷ In contrast, at the oral hearing OTA asked Ms. Schaedler about whether and how her estimated tax payments were timely made. Ms. Schaedler stated that appellant's accountant reminded her to make estimated payments for 2019 and she did so. For 2020, however, Ms. Schaedler testified that the accountant again reached out to ask whether appellant had made estimated payments and Ms. Schaedler incorrectly informed the accountant that the payments had been made.

⁸ R&TC sections 19142(b), 19147 and 19148 provide for some exceptions to the imposition of the estimated tax penalty. However, there is no provision allowing for the abatement of the estimated tax penalty based solely on reasonable cause. Appellant has not alleged that any of the above exceptions apply; therefore, this Opinion will not discuss them further.

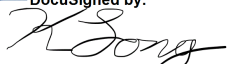
⁹ In some instances, a taxpayer may obtain relief from interest, a taxpayer must qualify under the waiver provisions of R&TC sections 19104, 19112, or 21012. Under R&TC section 19104, FTB is authorized to abate or refund interest if there has been an unreasonable error or delay in the performance of a ministerial or managerial act by an employee of FTB. R&TC section 21012 may apply where there has been reliance on written advice requested of FTB. Appellant does not allege that any of the statutory provisions for interest relief apply. Additionally, OTA does not have jurisdiction over R&TC section 19112 relating to extreme financial hardship. As such, these statutory provisions will not be discussed further.

HOLDINGS

1. Appellant has not established reasonable cause for the late filing of its returns for the 2018 and 2020 tax years.
2. Appellant is not entitled to abatement of the estimated tax penalties for the 2018 and 2020 tax years.
3. Appellant is not entitled to interest abatement.

DISPOSITION

FTB's action is sustained.

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Keith T. Long
Administrative Law Judge

We concur:

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John O. Johnson
Administrative Law Judge

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Seth Elsom
Hearing Officer

Date Issued: 7/16/2026