

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 250419225
U.S. POLYMERS, INC.)
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OPINION

Representing the Parties:

For Appellant: Vram Ohanesian, Chief Financial Officer

For Respondent: Vicki M. Leclerc, Program Specialist

S. KIM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, U.S. Polymers, Inc. (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant's claim for refund of \$75,474.15¹ for the 2020 tax year and \$61,314.49² 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 established reasonable cause for abatement of the late filing penalties for the 2020 and 2021 tax years.
2. Whether appellant has established a legal basis for abatement of the estimated tax penalty for the 2020 and 2021 tax years.

FACTUAL FINDINGS

1. On November 30, 2022, appellant untimely filed a 2020 California Corporation Franchise or Income Tax Return reporting, as relevant here, a self-assessed estimated tax penalty

¹ The claim amount consists of a late filing penalty of \$75,455.25 and an estimated tax penalty of \$18.90.

² The claim amount consists of a late filing penalty of \$56,892.75 and an estimated tax penalty of \$4,421.74.

- of \$8,742. FTB accepted the return, reduced the estimated tax penalty to \$18.90, and imposed a late filing penalty of \$75,455.25.
2. On November 7, 2023, appellant untimely filed a 2021 California Corporation Franchise or Income Tax Return reporting, as relevant here, a self-assessed estimated tax penalty of \$4,422. FTB accepted the return, including an estimated tax penalty of \$4,421.74, and imposed a late filing penalty of \$56,892.75.
 3. Appellant timely filed a claim for refund of \$125,215.62 for the 2020 tax year and \$92,062.92 for the 2021 tax year.³
 4. As relevant here, FTB denied the claim for refund for the late filing penalty of \$75,455.25 and the estimated tax penalty of \$18.90 for the 2020 tax year, and the late filing penalty of \$56,892.75 and the estimated tax penalty of \$4,421.74 for the 2021 tax year.
 5. Appellant timely filed this appeal.

DISCUSSION

Issue 1: Whether appellant has established reasonable cause to abate the late filing penalties for the 2020 and 2021 tax years.

R&TC section 19131(a) imposes a late filing penalty when a taxpayer fails to file a return on or before the due date, unless it is shown that the failure was due to reasonable cause and not willful neglect. When FTB imposes a late filing penalty, it is presumed to have been correctly imposed, and the burden of proof is on the taxpayer to show that reasonable cause exists to abate the penalty. (*Appeal of Xie*, 2018-OTA-076P.) To establish reasonable cause, the taxpayer must provide credible and competent evidence establishing that the failure to timely file a return occurred despite the exercise of ordinary business care and prudence. (*Appeal of Summit Hosting LLC*, 2021-OTA-216P.) Unsupported assertions are insufficient to satisfy the taxpayer's burden of proof. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.)

A taxpayer has a personal, non-delegable obligation to file a tax return by the due date. (*Appeal of Summit Hosting LLC*, *supra*.) Reliance on an expert cannot function as a substitute for compliance with an unambiguous statute. (*Ibid.*) A taxpayer has an obligation to file timely returns with the best available information, and to then subsequently file an amended return, if necessary. (*Appeal of Xie*, *supra*.) Difficulty in obtaining information does not constitute reasonable cause for the late filing of a return. (*Ibid.*) Additionally, difficulty in calculating a tax liability does not, by itself, constitute reasonable cause. (See *Appeal of Rougeau*,

³ The claim amounts also included interest and a manual penalty, which are not at issue in this appeal.

2021-OTA-335P (examining whether there was reasonable cause for a late payment of tax).) A taxpayer's difficulty in determining income with exactitude does not negate a taxpayer's requirement to comply with its tax obligations based upon a reasonably accurate estimate of its tax liability. (*Ibid.*) A taxpayer must establish that it could not have acquired the information necessary to make an estimate of its tax liability. (*Ibid.*)

Here, appellant does not dispute that it did not timely file its tax returns for the 2020 and 2021 tax years. Nor does appellant dispute the amounts of the late filing penalties. Instead, appellant argues that there was reasonable cause for its failure to timely file the returns. Specifically, appellant argues that (1) the COVID-19 pandemic affected its ability to operate and its capacity to fulfill tax obligations in a timely manner; and (2) it underwent a significant change in leadership with the transition of its controller, which added considerable complexity to operations and contributed to difficulties in ensuring timely compliance.

However, appellant has not provided any credible evidence establishing that the COVID-19 pandemic or the transition of its controller prevented it from timely filing returns for the 2020 and 2021 tax years. Although appellant asserts that it could not meet its filing deadlines because of "health concerns, government-imposed lockdowns, supply chain disruptions, and workforce challenges," appellant has not demonstrated what steps it took to ensure compliance with its tax obligations during this time. Furthermore, appellant has not provided any additional information or presented any evidence related to the transition of its controller, such as the period when the transition took place (e.g., when the previous controller left and when the new controller joined), or appellant's efforts to hire a new controller. Nor has appellant explained the difficulties the transition caused in timely filing its returns. Based on the foregoing, it is impossible to ascertain whether appellant's failure to timely file the returns occurred despite the exercise of ordinary business care and prudence. Appellant's vague and unsupported assertions are insufficient to satisfy its burden to prove reasonable cause. (*Appeal of GEF Operating, Inc.*, *supra.*) Therefore, appellant has failed to establish reasonable cause to abate the late filing penalties.

Issue 2: Whether appellant has established a legal basis to abate the estimated tax penalty for the 2020 and 2021 tax years.

A corporation subject to income tax must pay estimated tax. (R&TC, § 19023.) A 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. (R&TC, §§ 19142, 19144.) Relief from the estimated tax penalty is not available upon a showing of reasonable cause,

although limited statutory exceptions to the penalty exist. (*Appeal of Saltzman*, 2019-OTA-070P.)

Here, appellant does not dispute that it failed to make timely estimated tax payments for the 2020 and 2021 tax years. Nor does appellant dispute the amounts of the estimated tax penalties. Instead, appellant argues that the estimated tax penalties should be abated for reasonable cause.

However, there is no reasonable cause exception upon which the estimated tax penalties can be abated. Therefore, appellant has failed to establish a legal basis to abate the estimated tax penalties.

HOLDINGS

1. Appellant has not established reasonable cause to abate the late filing penalties for the 2020 and 2021 tax years.
2. Appellant has not established a legal basis to abate the estimated tax penalties for the 2020 and 2021 tax years.

DISPOSITION

FTB's actions denying the claims for refund are sustained.

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Steven Kim
Administrative Law Judge

We concur:

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Amanda Vassigh
Administrative Law Judge

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Tommy Leung
Administrative Law Judge

Date Issued: 8/5/2026