

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 18010695  
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**OMANA GROUP, LLC** ) Date Issued: March 15, 2018  
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**OPINION**

Representing the Parties:

For Appellant: William Viteri, E. A.

For Respondent: Kathleen Cook, Tax Counsel III

J. ANGEJA, Administrative Law Judge: Pursuant to California Revenue and Taxation Code section 19324,<sup>1</sup> Omana Group, LLC (appellant) appeals an action by the Franchise Tax Board (FTB or respondent) in denying appellant’s claim for a refund in the amount of \$396 for the 2014 tax year.

Appellant waived its right to an oral hearing and therefore the matter is being decided based on the written record.

**ISSUE**

Whether appellant has shown that the late-filing penalty for 2014 should be abated.

**FACTUAL FINDINGS**

1. Appellant, a two-member Limited Liability Company (LLC) classified as a partnership for tax purposes, filed a late 2014 return on March 12, 2016. On April 22, 2016, respondent issued a “Limited Liability Company - Notice of Balance Due” (Notice) for

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<sup>1</sup> Unless otherwise indicated, all “Section” references are to sections of the California Revenue and Taxation Code. Section 19045 states that taxpayers have 30 days to appeal FTB’s action upon a taxpayer’s protest to the board (Board of Equalization). As relevant, Section 20, subdivision (b) provides that for appeals transferred to the Office of Tax Appeals on or after January 1, 2018: “Unless the context requires otherwise, as used in this code or any other code, ‘board,’ with respect to an appeal, means the Office of Tax Appeals.”

- 2014, which advised appellant that it owed a balance due of \$396 resulting from a 2014 late-filing penalty.
2. On May 6, 2016, respondent received appellant's payment of the \$396 late-filing penalty. Subsequently, respondent received a protest letter dated May 4, 2016, in which appellant requested respondent abate the late-filing penalty due to reasonable cause. Appellant stated in its letter that appellant had completed its federal and California tax returns for 2014 on April 9, 2015, but appellant failed to timely file them because of an electronic transmission error. Subsequently, appellant resubmitted its (untimely) returns to the Internal Revenue Service (IRS) and respondent, incurring both federal and state late-filing penalties.
  3. By letter dated May 23, 2016, the IRS advised appellant that it had abated the federal late-filing penalty, based solely on appellant's good history of timely filing its federal tax returns (i.e., the federal First Time Penalty Abatement policy).
  4. By a notice of action dated November 7, 2016, respondent informed appellant that it was denying appellant's 2014 refund claim. Respondent stated that it can waive a late-filing penalty only if the failure to file a timely tax return was attributable to reasonable cause, and that appellant had not established reasonable cause.
  5. This timely appeal followed. On appeal, appellant contends that the late-filing penalty should be abated because the IRS allegedly abated the corresponding federal penalty for late filing based on reasonable cause.

### DISCUSSION

Section 19172(a)(1) provides in part that if any partnership required to file a return under section 18633.5 for any taxable year fails to file the return at the prescribed time (determined with regard to any extension of time for filing), that partnership shall be liable for a penalty determined under section 19172(b), for each month (or fraction of each month) during which that failure continues (but not to exceed 12 months), unless it is shown that the failure is due to reasonable cause. For the tax year in question, section 18633.5(a) provides in part that every LLC which is classified as a partnership for California tax purposes that is doing business in California, organized in California, or registered with the California Secretary of State shall file its return on or before the 15<sup>th</sup> day of the fourth month following the closing of its taxable year. To establish reasonable cause, a taxpayer must show that its failure to file a timely return

occurred despite the exercise of ordinary business care and prudence. (*Appeal of Howard G. and Mary Tons*, 79-SBE-027, Jan. 9, 1979.)

Under the IRS's First Time Penalty Abatement program a taxpayer may be relieved of a federal late-filing penalty based on previous good filing behavior, rather than reasonable cause. Neither the California Legislature nor the FTB have adopted a comparable penalty abatement program. Therefore, an IRS decision to abate a federal late-filing penalty under IRS First Time Penalty Abatement program does not constitute grounds for abating the California late-filing penalty, even if appellant had shown that it had a good California filing history.

Here, the IRS letter of May 23, 2016, clearly shows that the federal penalty abatement was made under the IRS First Time Penalty Abatement program (it states the abatement was based on "the fact that you have a good history of timely filing Form 1065 returns"), and not based upon an IRS determination that reasonable cause existed for the late filing. Appellant has not provided any contemporaneous evidence showing reasonable cause for its failure to file a timely 2014 California return, even though it had been requested to do so. In particular, appellant has provided no documentary evidence corroborating the alleged transmission error. Appellant also failed to offer evidence or explanation as to why it took 11 months following the alleged transmission error (and 5 months after the extended due date) to file the return. Therefore, appellant has not established reasonable cause for late filing its 2014 California return.

HOLDING

Appellant has not shown that the late-filing penalty should be abated.

DISPOSITION

Respondent's action is sustained.

DocuSigned by:  
*Jeff Angeja*  
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Jeffrey G. Angeja  
Administrative Law Judge

We concur:

DocuSigned by:

*Andrew Kwee*

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Andrew J. Kwee

Administrative Law Judge

DocuSigned by:

*Sara A. Hosey*

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Sara A. Hosey

Administrative Law Judge