

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)	OTA Case No. 18032377
)	
CPM PITTSBURG LLC)	Date Issued: September 10, 2018
)	
)	
)	

OPINION

Representing the Parties:

For Appellant: Marvin Mendelsohn, President

For Respondent: Samantha Q. Nguyen, Tax Counsel

BRAMHALL, Administrative Law Judge: Pursuant to California Revenue and Taxation Code section 19324,¹ CPM Pittsburg LLC (appellant) appeals an action by the Franchise Tax Board (FTB or respondent) denying a claim for refund in the amount of \$551.45² for the 2016 tax year.

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

ISSUES

1. Has appellant established that its 2016 limited liability company (LLC) fee payment was timely?
2. If appellant’s payment was late, has appellant established reasonable cause for the late payment?

¹ Unless otherwise indicated, all “Section” or “§” references are to sections of the California Revenue and Taxation Code.

² The actual amount in controversy is \$503.12, consisting of \$420 of late-payment penalty and \$83.12 of interest, the amount paid by appellant. FTB’s original assessment was reduced during pendency of this appeal.

FACTUAL FINDINGS

1. Respondent timely received a payment of \$800 from appellant for the 2016 annual limited liability company ("LLC") tax.
2. On July 15, 2017, appellant filed a Limited Liability Company Return of Income (Form 568) for the tax year ending December 31, 2016. On the return, appellant reported income of \$1,566,718 and self-assessed an LLC fee of \$6,000 as being due, and the \$800 annual LLC tax that had been timely paid.
3. With the return, appellant included a check for \$6,000 with the notation "2017 FTB 3536 (LLC)" in the memo line. Appellant also attached to its return a Form 3536 (LLC) Estimated Fee for LLCs payment voucher for taxable year 2017 along with the \$6,000 payment.
4. Based on these payment instructions from appellant, respondent applied the \$6,000 payment to the 2017 taxable year.
5. Respondent then issued a bill to appellant on August 15, 2017. The bill indicated a late payment of tax penalty of \$450 (consisting of the \$150 monthly penalty and \$300 underpayment penalty),³ plus interest, in addition to the \$6,000 unpaid 2016 LLC fee for a balance due of \$6,551.45.⁴
6. By letter dated August 18, 2017, appellant asserted that the \$6,000 payment included with the return was intended for taxable year 2016 and not 2017 as indicated in the memo line of the check.
7. Appellant further claimed the \$6,000 payment was timely and therefore the penalty and interest should be abated.
8. Although appellant had not paid the balance due in full, respondent treated appellant's correspondence as a claim for refund of the penalty and interest in the amount of \$551.45 and issued a claim denial letter dated October 10, 2017.
9. This timely appeal followed requesting a refund of the entire \$6,551.45 indicated in respondent's initial billing notice.

³ Calculated as 0.5% of \$6,000 for five months.

⁴ Respondent's records reflected this amount due for 2016 based on the \$6,000 amount due appellant reported on its 2016 return.

10. Subsequently, on November 21, 2017, respondent transferred the \$6,000 payment from taxable year 2017 to 2016, with a payment effective date of its original receipt date – July 15, 2017. The monthly portion of the late payment of tax penalty was accordingly adjusted from \$150 to \$120, and interest was also adjusted accordingly, leaving an unpaid balance of \$503.12.
11. On December 8, 2017, respondent received a bill payment of \$503.12 from appellant paying the balance due in full.

DISCUSSION

Issue 1 - Has appellant established that its 2016 LLC fee payment was timely?

For LLCs classified as a partnership and for tax years beginning on or after January 1, 2016, the return filing and payment due date is the 15th day of the third month following the close of its taxable year. (See § 18633.5.) Appellant is registered with the California Secretary of State as an LLC and filed a California Form 568 "Limited Liability Company Return of Income," the form used by an LLC that is classified as a partnership. As such, because the close of appellant's taxable year is December 31, 2016, the due date for filing and payment of tax is March 15, 2017. (§ 17942(c).)

Appellant's payment of the \$6,000 LLC fee for taxable year 2016 was made and applied, after adjustment of the year to which it was originally applied by respondent, effectively, on July 15, 2017. Appellant does not contest this payment date, but asserts the payment was timely. No support for that position has been provided.

In accordance with Section 19132, unless it is shown the failure is due to reasonable cause and not due to willful neglect, a penalty will be imposed for the late payment. In the case of a failure to timely pay the amount due as shown on the return, the penalty is computed and imposed at the rate of five percent of the unpaid amount plus 0.5 percent of the unpaid amount for each additional month or fraction of a month the payment is late, up to 40 months. Here, appellant was deemed to have paid the 2016 self-reported LLC fee of \$6,000 on July 15, 2017, four months after the March 15, 2017 due date. Accordingly, respondent correctly determined that the payment was late and appropriately imposed a late-filing penalty of \$420⁵ and applicable interest.

⁵ Calculated as 0.5% of \$6,000 for four months, plus \$300 underpayment.

Issue 2 – Has appellant established reasonable cause for the late payment?

The burden of proof is on the taxpayer to show that reasonable cause exists to support the abatement of the late payment penalty. To establish reasonable cause, a taxpayer must show that the reason for failing to timely pay was such that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Roger W. Sleight*, 83-SBE-244, Oct. 26, 1983; *Appeal of M.B. and G.M. Scott*, 82-SBE-249, Oct. 14, 1982.)⁶

In this matter, appellant has offered no argument or documentation supporting a claim that reasonable cause exists for its late payment. Rather, appellant’s only argument is that payment was timely, without further elaboration. As established above, appellant’s payment for its 2016 LLC fee was made four months after the due date. Accordingly, appellant has failed to meet its burden to establish any basis for abatement of the late-filing penalty.

HOLDINGS

1. Appellant has failed to establish that its 2016 LLC fee payment was made timely.
2. Appellant has failed to establish reasonable cause for its late payment.

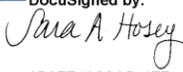
DISPOSITION

Respondent’s action assessing the late payment penalty for tax year 2016, in the reduced amount of \$420 plus interest, as set forth in respondent’s opening brief, is sustained.

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 Douglas Bramhall
 Administrative Law Judge

We concur:

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 Sara A. Hosey
 Administrative Law Judge

⁶ Published precedential decisions of the BOE, designated by “SBE,” may be found on the BOE’s website: <http://www.boe.ca.gov/legal/legalopcont.htm#boeopinion>. OTA is the successor in interest to the BOE with regard to income tax appeals. Therefore, precedential BOE opinions that were adopted prior to January 1, 2018, in accordance with applicable law and regulations, may be cited as precedential authority to OTA. (Cal. Code of Regs., tit. 18, § 30501(d)(3).)

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Grant S. Thompson

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Grant S. Thompson

Administrative Law Judge