

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**A 'MON'S MC LLC**

) OTA Case No. 18010779  
)  
) Date Issued: August 27, 2018  
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)  
)

**OPINION**

Representing the Parties:

For Appellant: Carlo Camacho

For Respondent: Gi Jung Nam, Tax Counsel

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code section 19324,<sup>1</sup> A'MON'S MC, LLC (appellant) appeals an action by the Franchise Tax Board (FTB or respondent) denying appellant's claim for refund of \$1,728 for the 2014 taxable year.

Office of Tax Appeals (OTA) Administrative Law Judges Tommy Leung, Sara Hosey, and Jeffrey Angeja held an oral hearing for this matter in Sacramento, California, on July 23, 2018. At the conclusion of the hearing, the record was closed.

**ISSUE**

Should the late-filing penalty be abated?

**FACTUAL FINDINGS**

1. Appellant is a limited liability company with eight members and is treated like a partnership for tax purposes.
2. Appellant submitted vouchers and made two \$800 payments for its 2014 taxes in April of 2014 and 2015 (the latter deemed by FTB to be paid on April 15, 2015), for a total of \$1,600.

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<sup>1</sup> Unless otherwise indicated, all statutory references are to sections of the Revenue and Taxation Code in effect during 2014.

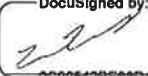
3. In 2017, FTB notified appellant that appellant's 2014 tax return was not filed. In response, appellant submitted a copy of its 2014 tax return, which was signed by Steven Andeweg (its President) and dated April 6, 2017. Thereafter, FTB notified appellant that it was subject to a late-filing penalty of \$1,728 pursuant to section 19172 because appellant's 2014 tax return was filed late.
4. The penalty was calculated by multiplying the number of members (8) by the number of months delinquent (12 maximum) by \$18.
5. Upon payment, appellant filed a claim for refund of the late-filing penalty on May 31, 2017. FTB denied the refund claim on July 7, 2017. This appeal followed.
6. During the oral hearing, appellant's witnesses testified that on April 15, 2015, after picking up appellant's completed 2014 tax return from the tax preparer, they went to the nearby post office and inserted the State tax payment voucher and State tax return in the mail slot in separate envelopes (the federal return was e-filed). After appellant presented its case and OTA examined appellant's witnesses, and following a brief recess, FTB decided to grant appellant's refund claim.

HOLDING

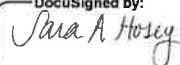
The late-filing penalty is abated, as agreed to by the parties at hearing.


DISPOSITION

The late-filing penalty is abated, and the claimed refund is allowed.

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Tommy Leung  
Administrative Law Judge

We concur:

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Sara A. Hosey  
Administrative Law Judge

DocuSigned by:  
  
0D3908C3CC814A9  
Jeffrey G. Angeja  
Administrative Law Judge