

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No. 19014194
)	
BAY AREA YAKINIKU, LLC)	Date Issued: October 30, 2019
)	
)	

OPINION

Representing the Parties:

For Appellant: Anthony T. Lee, Representative

For Respondent: Anne Mazur, Specialist

N. DANG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Bay Area Yakiniku, LLC (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund for the 2017 tax year.

Appellant waived its right to an oral hearing, and therefore, we decide the matter based on the written record.

ISSUE

Whether the underpayment of estimated limited liability company (LLC) fee penalty was properly imposed and, if so, whether it may be abated.

FACTUAL FINDINGS

1. Appellant’s LLC fee for the 2017 tax year was due on June 15, 2017.
2. On June 8, 2017, appellant attempted to pay its LLC fee for the 2017 tax year through FTB’s Web Pay service. FTB was unable to process appellant’s online payment because appellant had entered an invalid bank account number.
3. After the payment deadline had passed, appellant discovered that its June 8, 2017 attempt was unsuccessful, and on June 21, 2017, appellant submitted another online payment which FTB successfully processed.

4. Due to appellant's late payment, FTB imposed an underpayment of estimated LLC fee penalty pursuant to R&TC section 17942.

DISCUSSION

R&TC section 17942 imposes an LLC fee based on the total California source income of LLCs that are doing business in California. For tax years beginning on or after January 1, 2009, the LLC fee is required to be estimated and paid on or before the 15th day of the sixth month of the taxable year. (R&TC, § 17942(d)(1).) When an estimated payment of the LLC fee is less than the amount of the LLC fee due for the taxable year, a penalty equal to 10 percent of the underpayment is imposed unless the fee amount that was timely estimated and paid was equal to or greater than the total amount of the LLC fee assessed for the preceding taxable year. (R&TC, § 17941(d)(2).)

Appellant contends that the penalty was improperly imposed because it made a timely payment on June 8, 2017, the date it first submitted an online payment for the LLC fee to FTB. Alternatively, appellant argues that the penalty should be abated because it was diligent in paying the LLC fee.

In considering whether the penalty was properly imposed, we note that appellant's June 8, 2017 payment was not processed because appellant entered an invalid bank account number. Appellant's unsuccessful *attempt* to pay this fee on June 8, 2017, does not constitute a timely payment. It was not until six days after the June 15, 2017 payment deadline, on June 21, 2017, that appellant made a successful, but untimely payment. Therefore, we find that the penalty was properly imposed.

Further, while we commend appellant for promptly submitting a second online payment upon discovering that its first online payment was not processed, there is no provision for abatement of the penalty once it has been properly imposed.

HOLDING

The underpayment of estimated LLC fee penalty was properly imposed and may not be abated.

DISPOSITION

FTB’s action is sustained.

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Nguyen Dang
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Nguyen Dang
Administrative Law Judge

We concur:

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Linda C. Cheng
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Linda C. Cheng
Administrative Law Judge

DocuSigned by:
Elliott Scott Ewing
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Elliott Scott Ewing
Administrative Law Judge