

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**609 N. HAYWORTH LP**

) OTA Case No. 18093719  
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**OPINION**

Representing the Parties:

For Appellant: John E. Saunders  
For Respondent: Gi Nam, Tax Counsel  
Natasha Page, Tax Counsel IV

J. JOHNSON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, appellant 609 N. Hayworth LP appeals an action by respondent Franchise Tax Board in denying appellant’s claim for refund in the amount of \$5,210.13 for the 2016 tax year.<sup>1</sup>

Office of Tax Appeals Administrative Law Judges John O. Johnson, Andrew J. Kwee, and Daniel K. Cho, held an oral hearing for this matter in Los Angeles, California, on September 19, 2019. At the conclusion of the hearing, the record was closed and this matter was submitted for decision.

**ISSUE**

Has appellant shown that the late filing of its 2016 tax return was due to reasonable cause and not willful neglect?

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<sup>1</sup> Appellant originally filed its appeal of a deemed denial of its claim for refund, under R&TC section 19331; however, respondent issued a Notice of Action (NOA) denying appellant’s claim for refund on or around the date that appellant’s appeal was received by the Office of Tax Appeals. We will treat the appeal as an appeal of that NOA.

### FACTUAL FINDINGS

1. Appellant formed as a limited partnership and registered with the California Secretary of State's office on December 1, 2016.
2. Appellant's only activity for 2016 was collecting partner contributions.
3. Appellant had 12 partners by the end of 2016, and added an additional 11 partners in 2017.
4. Appellant filed a tax return (Form 565) for the 2016 tax year late, on March 26, 2018.<sup>2</sup> The return reported 23 members, no ordinary income, and an annual minimum tax due of \$800, which it remitted with the return.
5. Respondent issued a Notice of Balance Due, which imposed a late-filing penalty of \$200 and a per-partner penalty of \$4,968, plus \$42.13 in interest.
6. Appellant paid the amount due and filed a claim for refund. Respondent denied the claim for refund, and this timely appeal followed.

### DISCUSSION

When respondent imposes a penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Myers* (2001-SBE-001) 2001 WL 37126924.) The burden of proof is on the taxpayer to provide credible and competent evidence supporting a claim of reasonable cause; otherwise the penalty cannot be abated. (*Appeal of Xie* (2018-OTA-076P).) Reasonable cause requires a showing that the taxpayer acted as an ordinarily intelligent and prudent businessperson would have acted under similar circumstances. (*Appeal of Quality Tax & Financial Services, Inc.* (2018-OTA-130P).)

R&TC section 19131 imposes a late-filing penalty on a taxpayer who fails to file a return by either the due date or the extended due date unless it is shown that the failure was due to reasonable cause and not willful neglect. The late-filing penalty is calculated at 5 percent of the tax for each month or fraction thereof that the return is late, with a maximum penalty of 25 percent of the tax.

R&TC section 19172 imposes a per-partner penalty when a partnership fails to file a return at the time prescribed unless it is shown that the failure was due to reasonable cause. The

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<sup>2</sup> Appellant's representative, who also prepared appellant's returns for the year at issue and subsequent years, testified at the hearing that it was not until preparing the return for the 2017 year that he realized appellant had a return filing obligation for the 2016 year.

per-partner penalty under R&TC section 19172 is computed at \$18 multiplied by the number of partners for each month, or fraction thereof, that the return is late, up to a maximum of 12 months. (R&TC, § 19172(b).) Both penalties under R&TC sections 19131 and 19172 are imposed when a partnership fails to timely file a required tax return.

Here, appellant filed its 2016 tax return on March 26, 2018, which is more than a year beyond the due date of March 15, 2017. The late-filing penalty was calculated as \$200 (i.e., 25 percent of the \$800 annual tax). The per-partner penalty was originally calculated based on 23 partners, which was the number of partners reported on appellant's 2016 tax return. However, appellant verified on appeal that it had only 12 partners as of the end of 2016. Respondent has agreed to readjust the penalty amount from \$4,968 to \$2,592 and issue a refund or credit of \$2,376 (i.e., \$4,968 - \$2,592), plus applicable interest.

Appellant argues that it did not act with willful neglect in failing to timely file its 2016 tax return. A lack of willful neglect is a requirement under R&TC section 19131, but both R&TC sections 19131 and 19172 still require a showing that the failure to timely file was due to reasonable cause. As stated above, reasonable cause can be shown where a taxpayer has acted as an ordinarily intelligent and prudent businessperson, under the same circumstances. The record before us, including testimony from appellant's representative at the hearing, indicates that appellant did not consult with its tax professional to inquire about its potential tax filing obligation for the 2016 tax year. Although appellant had a short first year, consisting of just one month, we find that a prudent businessperson would have inquired as to any tax and return filing obligation as of the close of its first fiscal year, rather than mistakenly assuming that no tax or return would be due.

Appellant refers to R&TC section 17936 in support of its position that appellant did not act with willful neglect. R&TC section 17936 states, in its entirety, that “[a] limited partnership shall not be subject to the taxes imposed by this chapter if the limited partnership did no business in this state during the taxable year and the taxable year was 15 days or less.” Appellant concedes that the tax year at issue was more than 15 days, and therefore this exception does not apply. However, appellant uses this section as an example of why appellant was reasonable in believing that it did not have a filing requirement because it did not engage in income-producing activity during the short tax year. Contrary to appellant's stated belief at the time, though, appellant did have a filing obligation and owed tax for its first year. Appellant could have

avoided paying penalties and interest in this appeal had it inquired with a tax professional, as a reasonably prudent businessperson would have done.

HOLDING

Appellant has not shown reasonable cause for the late filing of its 2016 tax return.

DISPOSITION

Respondent’s action is modified to reduce the per-partner penalty from \$4,968 to \$2,592, resulting in a refund or credit of \$2,376 as conceded by respondent on appeal. In all other respects, respondent’s action is sustained.

DocuSigned by:  
*John O Johnson*  
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John O. Johnson  
Administrative Law Judge

We concur:

DocuSigned by:  
*Andrew J. Kwee*  
3CADA62F84884CB  
Andrew J. Kwee  
Administrative Law Judge

DocuSigned by:  
*Daniel Cho*  
7B28407A7E0A43D  
Daniel K. Cho  
Administrative Law Judge

Date Issued: 12/24/2019