

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

In the Matter of the Consolidated Appeals of: ) OTA Case Nos. 18093725, 18093726, 18093727  
7452 ROMAINE LP; )  
410 N. HAYWORTH LP; AND )  
8233 BLACKBURN LP )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: Richard A. Corleto, Attorney<sup>1</sup>

For Respondent: Gi Nam, Tax Counsel

For Office of Tax Appeals: Neha Garner, Tax Counsel III

J. JOHNSON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, appellants 7452 Romaine LP (appellant-Romaine), 410 N. Hayworth LP (appellant-Hayworth), and 8233 Blackburn LP (appellant-Blackburn) appeal the actions of respondent Franchise Tax Board in denying appellants’ claims for refund of \$3,795.28<sup>2</sup> for appellant-Romaine, \$3,037.35<sup>3</sup> for appellant-Hayworth, and \$3,796.27<sup>4</sup> for appellant-Blackburn for the 2013 tax year.

Appellants waived their right to an oral hearing, and therefore this matter is decided based on the written record.

<sup>1</sup> Mr. Corleto is an attorney with Corleto, Ackerman & Nussbaum LLP, and is also the manager of 7452 Romaine LP’s general partner, Oakwood Capital LLC.

<sup>2</sup> This amount consisted of the late filing penalty of \$3,456, the collection cost recovery fee of \$266, the lien fee of \$16, and interest of \$57.28.

<sup>3</sup> This amount consisted of the late filing penalty of \$3,024 and interest of \$13.35.

<sup>4</sup> This amount consisted of the late filing penalty of \$3,456, the collection cost recovery fee of \$266, the lien fee of \$16, and interest of \$58.27.

### ISSUES<sup>5</sup>

1. Whether appellants have established reasonable cause to abate the late filing penalties.
2. Whether appellant-Romaine and appellant-Blackburn have established that the collection cost recovery fee and lien fee should be abated.

### FACTUAL FINDINGS

1. On March 19, 2016, respondent sent each appellant a notice stating that its payment of \$800 was received, but that there was no record of its 2013 tax return. Appellants each responded in early April 2016, submitting 2013 tax returns and asserting that they had previously filed their respective tax returns on July 31, 2014.
2. Appellant-Hayworth's return, filed on April 6, 2016, reported that it had 14 partners.
3. Appellant-Romaine's return, filed on April 6, 2016, reported that it had 16 partners.
4. Appellant-Blackburn's return, filed on April 4, 2016, reported that it had 16 partners.
5. Each return reported deferred income from the disposition of assets<sup>6</sup> that occurred in the 2013 taxable year, and all returns were neither signed nor dated.
6. Respondent thereafter issued Notices of Balance Due to appellants notifying them that the late filing penalties for the amounts at issue on appeal were imposed for the 2013 tax year.
7. Respondent received appellant-Hayworth's payment of \$3,024 and a letter dated November 8, 2016, explaining that the payment was made under protest. Respondent undertook collection actions against appellant-Romaine and appellant-Blackburn, including sending notices regarding the potential imposition of the collection cost recovery fee and the filing of a lien.
8. Appellants filed claims for refund after full payment was made, which respondent denied. Appellants then filed these consolidated appeals.

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<sup>5</sup> Appellants' claims for refund include interest paid; however, appellants make no separate arguments for the abatement of interest. Accordingly, interest will not be addressed separately here, and will only be abated if the underlying liabilities upon which interest accrued are abated.

<sup>6</sup> Respondent indicates that the deferred income appeared to be from a like-kind exchange performed by appellants in August 2013.

## DISCUSSION

### Issue 1 - Whether appellants have established reasonable cause to abate the late filing penalties.

When respondent imposes a late filing penalty, the law presumes that the penalty was imposed correctly. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509.) A taxpayer has the burden of proving that a late filing penalty should not be imposed because a timely return was filed. (*Appeal of Crittenden* (74-SBE-043) 1974 WL 2859; *Appeal of La Salle Hotel Co.* (66-SBE-071) 1966 WL 1412.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.) "The production of a copy of a purported return without convincing evidence of mailing has been held insufficient to overcome official government records indicating that no return was filed." (*Appeal of La Salle Hotel Co.*, *supra*, citations omitted.) The fact that the return may have been prepared prior to the due date does not, in itself, prove the timely filing of the return. (*Appeal of La Salle Hotel Co.*, *supra*.)

For the relevant tax year, R&TC section 18633 required every partnership with income from a California source to file a return on or before the 15th day of the fourth month following the close of its taxable year.<sup>7</sup> R&TC section 18567 provides for a six-month paperless extension for partnership returns, as long as the return is filed within six months of the original due date. Accordingly, appellants were required to file their 2013 tax returns by April 15, 2014, with an extended filing due date of October 15, 2014. R&TC section 19172 imposes a late filing 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 late filing penalty under R&TC section 19172 is computed at \$18 per partner per month, or fraction thereof, that the return is late, up to a maximum of twelve months.

Appellants argue that they filed their returns on July 31, 2014, within the extended due date. However, respondent has no record of receiving any of appellants' 2013 tax returns before April 2016. Appellants have not provided a postmark or registered or certified mail receipt to show that they timely mailed their returns. Appellants submit a declaration from their accountant stating that the 2013 tax returns were timely and concurrently placed in the U.S. mail, with adequate postage, and addressed to both respondent and the Internal Revenue Service (IRS). The declaration further states that appellants did not receive any notices or correspondence from

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<sup>7</sup>For tax years beginning on or after January 1, 2016, partnership returns are due on the 15th day of the third month following the close of the taxable year.

the IRS asserting that their 2013 federal income tax return was filed late. Primarily, appellants rely on the statements in the declaration to assert that appellants' federal returns were timely filed, and assert that it is a reasonable assumption that the state returns were also timely filed. However, respondent provides federal transcripts for appellants showing that the IRS had no record of receiving appellants' 2013 federal income tax returns. Therefore, the reasonable inference would be that appellants did not timely file their state returns. (See *Appeal of La Salle Hotel Co.*, *supra*.)

Appellants' unsupported allegations do not overcome respondent's official government records indicating that the return was not timely filed. (*Appeal of La Salle Hotel Co.*, *supra*; *Appeal of Marks* (76-SBE-057) 1976 WL 4073.) Appellants' declarations do not constitute evidence of a timely mailing because appellants have not presented any corroborating evidence in support of the declarations. As such, the late penalties were properly imposed for the 2013 tax year.

Issue 2 - Whether appellant-Romaine and appellant-Blackburn have established that the collection cost recovery fee and lien fee should be abated.

R&TC section 19254 imposes a collection cost recovery fee for situations when a taxpayer fails to pay an amount due after respondent mails a notice to the taxpayer which requests payment and indicates that continued failure to pay the amount due may result in collection action. This fee is mandatory with no abatement provisions provided for under R&TC section 19254 for any circumstance, including reasonable cause.

In addition, if a taxpayer fails to pay any liability at the time that it becomes due and payable, respondent is authorized by R&TC section 19221 and Government Code sections 7174, 27361, 27361.3 and 27361.4 to secure and release liens and to charge the taxpayer for the lien fee. Once properly imposed, there is no provision in the R&TC which would excuse the imposition of the lien fee for any circumstances, including reasonable cause.

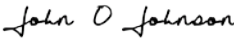
Here, appellant-Romaine and appellant-Blackburn failed to pay the late filing penalties after respondent mailed formal legal demands stating that a collection cost recovery fee would be imposed for a failure to timely pay. Therefore, the collection cost recovery fees were properly imposed. Furthermore, as appellant-Romaine and appellant-Blackburn failed to pay their late filing penalties at the time that it became due and payable, respondent properly imposed the lien fees.

HOLDINGS

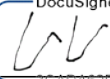
1. Appellants have not established reasonable cause to abate the late filing penalties.
2. Appellant-Romaine and appellant-Blackburn have not established that the collection cost recovery fee and lien fee should be abated.

DISPOSITION

For the foregoing reasons, respondent’s actions are sustained.

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 John O. Johnson  
 Administrative Law Judge

We concur:

DocuSigned by:  
  
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 Andrew J. Kwee  
 Administrative Law Judge

DocuSigned by:  
  
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 Daniel K. Cho  
 Administrative Law Judge

Date Issued: 2/14/2020