

In the Matter of the Appeal of:
KOI MEDIA, LLC

) OTA Case No. 19105423
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¹ For tax year 2016, the refund at issue consists of a late-payment penalty of \$156, a late-filing penalty of \$432, and interest of \$83.09. For tax year 2017, the refund consists of a late-payment penalty of \$132 and interest of \$65. For tax year 2018, the refund at issue consists of a late-payment penalty of \$84 and interest of \$30.09.

FACTUAL FINDINGS

1. In July 2016, appellant's organizers formed the entity as a limited liability company (LLC) with the California Secretary of State (SOS) by filing Articles of Organization, which indicated that appellant would be managed by its two members.
2. In August 2016, appellant filed a Statement of Information with the SOS, indicating that appellant had two member-managers: Samuel Wood and Miki Huber.
3. During the relevant period, one of appellant's member-managers, Miki Wood, née Huber, experienced numerous serious health issues. Mrs. Wood received chiropractic, naturopath and medical treatment. In addition, during this relevant period, Mr. and Mrs. Wood's daughter experienced numerous serious health issues. Their daughter received chiropractic, craniosacral, acupuncture, urological and gastroenterological treatment.
4. Of the two members, only Mr. Wood was employed, and, in addition to his employment, he was focused on developing an educational app for appellant to sell online.
5. Appellant did not file a timely tax return for 2016. Appellant filed tax returns for tax years 2017 and 2018 in July 2018 and February 2019, respectively, but appellant filed partnership tax returns (Form 565 Partnership), rather than LLC tax returns (Form 568 LLC). Respondent informed Mrs. Wood that appellant had filed using the incorrect tax returns. Respondent also informed Mrs. Wood that appellant had balances due for all three tax years based on the \$800 minimum annual tax, plus penalties and interest.
6. Appellant filed the correct Form 568 LLC tax returns for all tax years. The tax return for tax year 2016 was filed untimely in March 2019. The tax return for tax year 2017 was treated as filed timely in July 2018 based on the date that appellant incorrectly filed Form 565 Partnership. The tax return for tax year 2018 was filed timely. Appellant untimely paid the minimum annual tax due for each tax year.
7. Appellant claimed refunds of the penalties and interest. After respondent denied the claims for refund, appellant filed this timely appeal.

DISCUSSION

Issue 1 – Whether appellant’s failure to file a timely tax return for tax year 2016 was due to reasonable cause and not willful neglect.

In March 2019, appellant filed an untimely tax return for tax year 2016, and respondent imposed a late-filing penalty of \$432. R&TC section 19172 imposes a late-filing penalty when a partnership (or an LLC treated as a partnership) fails to file a return at the time prescribed unless it is shown that the failure was due to reasonable cause. For penalty abatement purposes, reasonable cause exists when the taxpayer acted as an ordinarily intelligent and prudent businessperson would have acted under similar circumstances. (*Appeal of Auburn Old Town Gallery, LLC*, 2019-OTA-319P (*Auburn OTG*).) In other words, a taxpayer must show that the failure to meet its tax filing obligation occurred despite the exercise of ordinary business care and prudence. (*Auburn OTG, supra*; *Appeal of Bieneman* (82-SBE-148) 1982 WL 11825.)

Appellant argues that Mrs. Wood’s numerous health issues, in addition to the numerous health issues related to Mr. and Mrs. Wood’s daughter, prove that the late filing was due to reasonable cause. It is true that health issues may establish reasonable cause where the taxpayer presents credible and competent proof that the circumstances of the illness prevented the taxpayer from complying with the law. (*Appeal of Triple Crown Baseball, LLC*, 2019-OTA-025P (*Triple Crown*); *Appeal of Seaman* (75-SBE-080) 1975 WL 3564.) And we have no reason to doubt the serious nature of the issues that Mrs. Wood and her daughter had to deal with; the evidence is overwhelming that they experienced a multitude of health issues during the relevant period.

However, on balance, this appeal concerns a member-managed LLC where each of its two member-managers were agents for the LLC. (Corp. Code, § 17703.01(a).) Although the two member-managers and their daughter faced unique facts and circumstances, there is no evidence in the record establishing that Mr. Wood, as one of appellant’s agents, was unable to file appellant’s tax return due to reasonable cause. (See *Appeal of Halaburka* (85-SBE-025) 1985 WL 15809 [reasonable cause required proving that both spouses were continuously prevented from filing; and in the absence of evidence that both spouses were incapacitated for the entire period, the penalty must be upheld].)

Appellant also argues that financial hardship establishes reasonable cause. In particular, appellant argues that Mr. Wood was the sole breadwinner, the family was experiencing

numerous personal and financial problems, and appellant's educational app was struggling to turn a profit. However, if personal difficulties simply cause the taxpayer to sacrifice the timeliness of one aspect of the taxpayer's affairs to pursue other aspects, the taxpayer must bear the consequences of that choice. (*Appeal of Loew's San Francisco Hotel Corp.* (73-SBE-050) 1973 WL 2783; *Triple Crown, supra.*) Here, there is no evidence before us to analyze the issue of financial hardship. Based on the evidence and information in the record, it seems more likely than not that Mr. Wood sacrificed the timeliness of one aspect of appellant's affairs to pursue other aspects. In addition, although appellant references the federal First Time Penalty Abatement program, the State of California has not adopted a comparable penalty abatement program. (*Appeal of Xie*, 2018-OTA-076P.)

Therefore, appellant failed to establish that the late filing was due to reasonable cause and not willful neglect.

Issue 2 – Whether appellant's failure to timely pay its tax liability for tax years 2016, 2017 and 2018 was due to reasonable cause and not willful neglect.

Because appellant failed to timely pay its tax liability for tax years 2016, 2017, and 2018, respondent imposed late-payment penalties in the sum of \$156, \$132, and \$84, respectively. The penalty is presumed correct unless the taxpayer can demonstrate that the late payment resulted from reasonable cause and not willful neglect. (R&TC, § 19132.) To establish reasonable cause, the taxpayer must demonstrate that its failure to timely pay the proper amount of the tax occurred despite the exercise of ordinary business care and prudence. (*Triple Crown, supra*; *Appeal of Sleight* (83-SBE-244) 1983 WL 15615.) Willful neglect is defined as a "conscious, intentional failure or reckless indifference." (*United States v. Boyle* (1985) 469 U.S. 241, 245.) The reason for missing the deadline must be such that an ordinarily intelligent and prudent businessperson would have acted similarly under the same circumstances. (*Triple Crown, supra.*)

Because the issue of whether a taxpayer has demonstrated reasonable cause for failure to pay tax asks the same questions and weighs the same evidence as the inquiry of whether reasonable cause exists for failure to file a tax return, opinions analyzing whether reasonable cause existed for failure to timely file a tax return are persuasive authority for determining whether reasonable cause existed for the failure to timely pay the tax. (*Triple Crown, supra.*) Thus, for tax years 2016 through 2018, we apply the same analysis as we did with Issue 1, and,

in so doing, we similarly conclude that there is no evidence that Mr. Wood, as one of appellant's agents, was unable to timely pay appellant's tax liability due to reasonable cause.

Therefore, appellant failed to establish that the late payments for tax years 2016, 2017, and 2018 were due to reasonable cause and not willful neglect.

Issue 3 – Whether appellant is entitled to interest abatement.

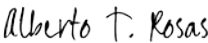
For tax years 2016, 2017, and 2018, appellant paid interest in the sum of \$83.09, \$65, and \$30.09, respectively. Imposing interest is mandatory, and respondent cannot abate interest except where authorized by law. (*Appeal of Balch*, 2018-OTA-159P.) Interest is not a penalty; it is compensation for the use of money. (*Ibid.*) Generally, to obtain waiver or abatement of interest, taxpayers must qualify under R&TC sections 19104, 19112, or 21012. Appellant does not specify why it is entitled to interest abatement. Based on the evidence, none of these statutory provisions apply. Therefore, appellant did not establish that it is entitled to waiver or abatement of interest.

HOLDINGS


1. Appellant did not show that its failure to file a timely tax return for tax year 2016 was due to reasonable cause.
2. Appellant did not show that its failure to timely pay its tax liability for tax years 2016, 2017 and 2018 was due to reasonable cause and not willful neglect.
3. Appellant did not show that it is entitled to interest abatement.

DISPOSITION

We sustain respondent's denial of the claims for refund.

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Alberto T. Rosas
Administrative Law Judge

We concur:

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Sheriene Anne Ridenour
Administrative Law Judge

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John O. Johnson
Administrative Law Judge

Date Issued: 9/17/2020