

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 20025857
ADVANCED RX SPECIALTIES, LLC)
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OPINION

Representing the Parties:

For Appellant: Alan B, Chinn, CPA

For Respondent: Christopher M. Cook, Tax Counsel III

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Advanced Rx Specialties, LLC (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying its refund claim of \$15,548.88, which consists of a per partner penalty of \$15,120 and \$426.88 in accrued interest, for the 2017 taxable year.

Appellant waived its right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUE

Whether the per partner late-filing penalty should be abated.

FACTUAL FINDINGS

1. Appellant is a limited liability company (LLC) which elected to be treated as a partnership for tax purposes. Appellant had 70 members during the 2017 taxable year.
2. Appellant filed its 2017 LLC Return of Income (Form 568) more than 12 months late, on April 12, 2019.
3. Because of the late filing, FTB imposed a per partner penalty of \$15,120, plus interest.

4. Appellant paid the proposed imposition and filed a claim for refund, asserting reasonable cause for the late filing.¹
5. FTB denied appellant's claim.

DISCUSSION

Every LLC that is classified as a partnership for California tax purposes that is doing business in California, organized in California, or registered with the California Secretary of State shall file its return on or before the fifteenth day of the third month following the close of its taxable year. (R&TC, § 18633.5(a).) Alternatively, the LLC may file its return on or before the automatic extended due date, which is seven months after the original filing due date. (R&TC, § 18567.) However, if the return is not filed by the extended due date, no extension is allowed. (See generally Cal. Code Regs., tit. 18, § 18567(a).)

A per partner late-filing penalty is imposed 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. (R&TC, § 19172.) This late-filing penalty is computed at \$18 multiplied by the number of partners (or LLC members) for each month, or fraction thereof, that the return is late, up to a maximum of 12 months. (R&TC, § 19172(b).) Appellant had 70 members during the 2017 taxable year, and filed its return more than 12 months past the original due date of March 15, 2018. Therefore, FTB properly imposed a \$15,120 late-filing penalty (\$18 x 70 members x 12 months).

The late-filing penalty will be abated if it is established that the late filing was due to reasonable cause. (R&TC, § 19172(a).) 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 Head and Feliciano*, 2020-OTA-127P.) 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. (*Appeal of Bieneman* (82-SBE-148) 1982 WL 11825.)

In *United States v. Boyle* (1985) 469 U.S. 241, 251-252 (*Boyle*), the Supreme Court held that “[t]he failure to make a timely filing of a tax return is not excused by the taxpayer’s reliance

¹ The claim included a request for a refund of the interest paid, based on this same reasonable cause argument. But because there is no reasonable cause exception for the imposition of interest (see *Appeal of Goodwin* (97-SBE-003) 1997 WL 258474), we will not address interest relief further.

on an agent, and such reliance is not ‘reasonable cause’ for a late filing” The Supreme Court noted that one does not need to be a tax expert to know that tax returns have fixed filing dates and taxes must be paid when due. (*Id.* at p. 251.)

On appeal, appellant contends that reasonable cause exists to abate the penalty. Specifically, appellant contends that although it signed an e-file authorization on May 3, 2018, the tax preparer, because of an administrative error, did not file the 2017 tax return until April 12, 2019. Appellant states that it did not know its 2017 tax return had not been e-filed until the administrative error was discovered. Appellant further asserts that it has a good compliance history and only existed a bit over two years (from March 2016 to July 2018).

However, appellant has not substantiated what efforts, if any, it took to verify that its 2017 tax return had been timely filed. Appellant asserts that the failure to file a timely return resulted from its tax preparer’s error, but neither reliance on one’s agent nor error qualify as reasonable cause. (See *Boyle, supra*, 469 U.S. 241 at p. 251-252; *Appeal of Quality Tax & Financial Services, Inc.*, 2018-OTA-130P.) In the absence of an acknowledgement that a return was transmitted, received, or accepted, an ordinarily prudent person would have checked its e-filing history and acknowledgment records for that return to confirm whether it had been transmitted, received, and accepted. (*Quality Tax & Financial Services, Inc., supra.*) Appellant has not established that it did so, and therefore, appellant has not shown that it failed to file a timely 2017 tax return despite the exercise of ordinary business care and prudence, or that circumstances beyond appellant’s control prevented it from timely doing so.

Finally, although appellant directs our attention to its good filing history, neither the California Legislature nor FTB have adopted a penalty abatement program comparable to the IRS’s good filing history penalty abatement program² and, thus, it cannot be used as a basis for relief from the state late-filing penalty at issue here. Instead, appellant must establish that its failure to timely file its 2014 return was due to reasonable cause, which it has failed to do.

Accordingly, appellant is liable for the late-filing penalty.

² While the IRS has an administrative program called “First Time Abate,” under which it will abate timeliness penalties if a taxpayer has timely filed returns and paid tax for the past three years, neither the California Legislature nor FTB has adopted a comparable penalty abatement program. The California Legislature has considered and declined to adopt bills that would change California law to allow a first-time abatement of timeliness-related penalties for taxpayers based solely on their history of timely filing and payment. (See Assem. Bill No. 1777 (2013-2014 Reg. Sess.).)

HOLDING

Appellant did not establish that it had the requisite reasonable cause for abating the R&TC section 19172 per partner late-filing penalty.

DISPOSITION

FTB’s action is sustained.

DocuSigned by:
Tommy Leung
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Tommy Leung
Administrative Law Judge

We concur:

DocuSigned by:
Andrew Kwee
745CE19AD48041B...
Andrew Kwee
Administrative Law Judge

DocuSigned by:
John O Johnson
873D9797B9E64E1...
John O. Johnson
Administrative Law Judge

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