

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
A'MON'S MC, LLC

) OTA Case No. 20015773
)
)
)
)

OPINION

Representing the Parties:

For Appellant:

Steven G. Andeweg, President
Carlo A. Camacho, Vice President

For Respondent:

Sarah J. Fassett, Tax Counsel
Cynthia Kent, Tax Counsel IV

A. ROSAS, Administrative Law Judge: Under Revenue and Taxation Code (R&TC) section 19324, appellant A'MON'S MC, LLC, appeals respondent Franchise Tax Board's action in denying appellant's claims for refund for tax year 2016. The claim for refund consists of a late-filing penalty of \$1,728 and interest of \$8.88.

Office of Tax Appeals Administrative Law Judges Josh Lambert, Amanda Vassigh, and Alberto T. Rosas held an oral hearing for this matter on April 20, 2021.¹ At the conclusion of the hearing, the record was closed and this matter was submitted for decision.

ISSUES

1. Whether appellant's 2016 tax return was filed timely. If not, whether the late filing was due to reasonable cause.
2. Whether appellant is entitled to interest abatement.

FACTUAL FINDINGS

1. Appellant is a California limited liability company (LLC) classified as a partnership for tax purposes. It is a calendar-year taxpayer.

¹ The oral hearing was noticed for Sacramento, California, and conducted electronically due to COVID-19.

2. Appellant timely paid its LLC annual tax due for tax year 2016. Appellant paid this \$800 tax twice, once by check dated April 15, 2016, and again by check dated April 14, 2017.²
3. On February 21, 2019, respondent issued a notice to appellant, notifying it that respondent received payment for the 2016 tax year but could not locate appellant's 2016 tax return.
4. Appellant filed a 2016 LLC tax return on April 5, 2019.³ Respondent accepted appellant's return as filed and imposed a \$1,728 late-filing penalty and applicable interest.
5. In April 2019, appellant filed a Claim for Refund form.
6. In June 2019, respondent issued a Notice of Balance Due indicating appellant had a \$1,736.88 balance due for the 2016 tax year. This balance included the late-filing penalty of \$1,728 and interest of \$8.88. The following month, appellant paid this amount in full, thereby perfecting its claim for refund.
7. In August 2019, appellant filed another claim for refund, this time on a Reasonable Cause Business Entity Claim for Refund form, for \$1,736.88. After respondent denied the claims for refund, appellant filed this timely appeal.

DISCUSSION

Issue 1 – Whether appellant's 2016 tax return was filed timely. If not, whether the late filing was due to reasonable cause.

The first question before us is whether appellant's 2016 tax return was filed timely. Appellant argues that it filed a timely 2016 tax return, but that its tax preparer inadvertently filed a partnership return rather than an LLC return. Respondent argues that it has no record of appellant having filed a timely 2016 LLC or partnership return, and that appellant did not file a 2016 return until April 5, 2019. Generally, taxpayers have the burden of proof, as appellant does in the case before us, meaning that appellant must prove that it filed a timely 2016 return; the applicable standard of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(c); *Appeal of Owens-Brockaway Glass Container, Inc.*, 2019-OTA-158P.)

² The second payment was applied to tax year 2017.

³ Appellant argues that this was the second time it had filed its 2016 tax return, alleging that it first filed a 2016 partnership tax return on April 11, 2017.

Preponderance of the evidence means “the evidence on one side outweighs, preponderates over, is more than, the evidence on the other side, not necessarily in number of witnesses or quantity, but in its effect on those to whom it is addressed.” (*Environmental Law Foundation v. Beech-Nut Nutrition Corp.* (2015) 235 Cal.App.4th 307, 322; *People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567 (italics omitted), quoting *Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 325.) The term refers to evidence that is more convincing than that opposed to it. (*Glage v. Hawes Firearms Co.*, *supra*, 226 Cal.App.3d at p. 324.) To meet this evidentiary standard, a party must establish by documentation or other evidence that the circumstances it asserts are more likely than not to be correct. (*Concrete Pipe and Products of California, Inc. v. Construction Laborers Pension Trust for Southern California* (1993) 508 U.S. 602, 622.) The preponderance of the evidence standard “simply requires the trier of fact ‘to believe that the existence of a fact is more probable than its nonexistence.’ ” (*In re Angelia P.* (1981) 28 Cal.3d 908, 918.)

On one side, we have appellant’s evidence. Appellant’s two witnesses testified that appellant filed a 2016 partnership tax return on April 11, 2017. The documentary evidence includes correspondence from appellant’s tax preparer, who indicates that due to an “administrative error” and “honest mistake,” she filed a partnership return instead of an LLC return. Based on witness testimony, it is unclear whether this tax return was filed electronically or submitted as a paper return. At one point, appellant’s vice-president, Mr. Camacho, testified that the return was filed electronically. He deferred to appellant’s president, Mr. Andeweg, who testified: “I do not recall whether she e-filed it or whether it was a paper handed in.” Appellant’s documentary evidence includes: (1) an unsigned 2016 Partnership Return of Income dated April 11, 2017; (2) an unsigned California e-file authorization (California e-file Return Authorization for Partnerships) for tax year 2016 dated April 11, 2017; and (3) an unsigned federal e-file authorization (IRS e-file Signature Authorization for Form 1065) for tax year 2016, which is also dated April 11, 2017.

On the other side, we have respondent’s evidence. Although appellant argues that it timely filed its 2016 federal and state tax returns, an Account Transcript indicates that the Internal Revenue Service could not find any data for appellant’s 2016 federal return. Respondent’s evidence also includes a list of all California LLC returns that appellant filed between 2006 to 2019, which indicates the 2016 LLC tax return was filed on April 5, 2019. As

to any California partnership returns filed by appellant, respondent's evidence shows that appellant filed a 2017 partnership return in June 2018.⁴

After reviewing the evidence, we conclude that appellant has not met its burden of proof. Appellant provided several documents with the April 11, 2017 date, and appellant also provided correspondence from its tax preparer stating that she filed the wrong tax return but filed it timely. Based on the evidence's effect on this panel, however, we find that appellant's evidence is not more convincing than that opposed to it. Respondent points out that the unsigned California e-file authorization for tax year 2016 dated April 11, 2017, is not e-filed with a taxpayer's e-filed return; rather, this is a form that is printed with a return and must be made available to respondent upon request. This e-file authorization in and of itself does not prove that a tax return was actually filed. In addition, respondent's evidence shows that there is no record of appellant e-filing—or attempting to e-file—a 2016 partnership return. Thus, the evidence on appellant's side does not outweigh the evidence on the other side. In other words, the evidence does not establish that it is more probable than not that appellant filed a 2016 tax return (LLC or partnership) on April 11, 2017.

After appellant filed its 2016 tax return on April 5, 2019, respondent accepted appellant's return as filed and imposed a \$1,728 late-filing penalty.⁵ Because we conclude that appellant's return was not filed timely, we now consider whether the late filing was due to reasonable cause. Respondent may impose 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. (R&TC, § 19172.) 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.) 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. (*Ibid.*)

Based on the testimony and appellant's documentary evidence, it is clear that appellant relied on its tax preparer. Appellant's tax preparer described the inadvertent filing of a partnership return rather than an LLC return as an "administrative error" and "honest mistake."

⁴ During the oral hearing, appellant's president testified that he was not certain whether that partnership return was for tax year 2016 or 2017.

⁵ Appellant does not dispute the late-filing penalty computation.

Yet, even if these errors and mistakes took place, respondent does not have any record of appellant having filed a timely partnership return for tax year 2016. In *United States v. Boyle* (1985) 469 U.S. 241, 251-252, the United States Supreme Court held that “[t]he failure to make a timely filing of a tax return is not excused by the taxpayer’s reliance on an agent, and such reliance is not ‘reasonable cause’ for a late filing” Under the Supreme Court’s decision in *Boyle*, we must conclude that appellant’s reliance on its tax preparer to file a timely 2016 tax return is not reasonable cause for the late filing. Therefore, appellant failed to establish that the late filing was due to reasonable cause.

Issue 2 – Whether appellant is entitled to interest abatement.

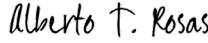
For tax year 2016, appellant paid interest in the sum of \$8.88. Interest is not a penalty. (*Appeal of Balch*, 2018-OTA-159P.) It is compensation for the use of money. (*Ibid.*) Imposing interest is mandatory, and respondent cannot abate interest except where authorized by law. (*Ibid.*) Appellant argues that it is entitled to interest abatement because it timely filed its 2016 tax return, but as indicated above, there is no evidence to establish the timely filing of this return. Generally, to obtain waiver or abatement of interest, taxpayers must qualify under R&TC sections 19104, 19112, or 21012. When it comes to interest abatement under R&TC section 19112, however, the Office of Tax Appeals lacks jurisdiction. (*Appeal of Moy*, 2019-OTA-057P.) Appellant does not allege that any of the three statutory provisions for interest abatement apply to the facts of this case; and based on the arguments presented and the evidence in the record, we conclude that 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 2016 tax return was filed timely. Appellant did not show that its failure to file a timely tax return was due to reasonable cause.
2. Appellant did not show that it is entitled to interest abatement.

DISPOSITION


We sustain respondent’s denial of the claim for refund.

DocuSigned by:

 B969EE4BD4914D5...

 Alberto T. Rosas
 Administrative Law Judge

We concur:
 DocuSigned by:

 CB1F7DA37831416...

 Josh Lambert
 Administrative Law Judge

DocuSigned by:

 7B17E958B7C14AC...

 Amanda Vassigh
 Administrative Law Judge

Date Issued: 6/15/2021