

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 19125600
PNBOOKS FAMILY LIMITED)
PARTNERSHIP)
_____)

OPINION

Representing the Parties:

For Appellant: Janene M. Montgomery, Partner

For Respondent: Gi Jung Nam, Tax Counsel

E. S. EWING, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, PNBooks Family Limited Partnership (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claims for refund of \$864, plus applicable interest for the 2014 taxable year, and \$1,064, plus applicable interest for each of 2015, 2016 and 2017 taxable years.¹

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

ISSUES

1. Whether late-filing penalties should be abated.
2. Whether interest should be abated.

FACTUAL FINDINGS

1. Appellant is a California limited partnership that owned and rented residential properties.²

¹ These amounts consist of a per-partner late-filing penalty of \$864 pursuant to R&TC section 19172 for each of the 2014 through 2017 taxable years and a late-filing penalty of \$200 pursuant to R&TC section 19131 for each of the 2015 through 2017 taxable years.

² The record includes a Certificate of Limited Partnership for appellant that was filed with the California Secretary of State on July 13, 2004.

2. Appellant did not timely file partnership returns for the 2014, 2015, 2016 and 2017 taxable years.³
3. Respondent sent correspondence requesting appellant file partnership returns for the 2014 and 2015 taxable years.⁴ On July 15, 2019, appellant filed returns for both the 2014 and 2015 taxable years, as well as returns for the 2016 and 2017 taxable years, all of which were filed late.⁵
4. Respondent accepted the returns as filed, but also imposed late-filing penalties under R&TC section 19131 for the 2015, 2016 and 2017 taxable years⁶ and per-partner late-filing penalties under R&TC section 19172 for the 2014, 2015, 2016 and 2017 taxable years. Appellant paid the penalties and interest in full.
5. Appellant filed claims for refund of the penalties and interest. Respondent denied the claims for refund.
6. Appellant filed this timely appeal.

DISCUSSION

Issue 1: Whether late-filing penalties should be abated.

When respondent imposes a penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) 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. (*Ibid.*) 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.*)

³ We note that, while appellant did not timely file returns for the 2014, 2015, 2016 and 2017 taxable years, appellant did timely pay its \$800 annual tax for the 2014 taxable year.

⁴ For the 2014 taxable year, respondent sent a past-due notice on February 14, 2018, and for the 2015 taxable year, respondent sent a past-due notice on May 1, 2019.

⁵ Appellant paid the \$800 annual tax payments for the 2015, 2016 and 2017 taxable years with its returns.

⁶ Respondent states that it did not impose a late-filing penalty for the 2014 taxable year pursuant to R&TC section 19131 because appellant timely paid its \$800 annual tax for the 2014 taxable year and there were no taxes due for the purposes of computing the penalty.

The R&TC contains two penalties that are applicable when a partnership files its return late. First, R&TC section 19131 imposes a late-filing penalty when a taxpayer fails to file its return on or before its due date, unless it is shown that the failure was due to reasonable cause and not willful neglect.⁷ Second, R&TC section 19172 takes into account the fact that a partnership is a pass-through entity and imposes a per-partner late-filing penalty (based on the number of partners in the partnership) when a partnership fails to file a return by the time prescribed, unless it is shown that the failure was due to reasonable cause.

Here, it is undisputed that appellant filed its tax returns late. As a result, respondent imposed the late-filing penalties under R&TC section 19131 for the 2015 through 2017 taxable years and the per-partner late-filing penalties under R&TC section 19172 for the 2014 through 2017 taxable years.⁸ Appellant does not contest the computation of these penalties. Instead, appellant makes reasonable cause-type arguments. First, appellant contends that its tax returns were filed late due to difficulties in communicating with the partnership's CPA. Appellant asserts that it later obtained help from an attorney to intervene with the CPA to eventually get the returns filed.⁹ We understand appellant's contention that its reliance on the CPA resulted in the late filing of the partnership's returns for the 2014 through 2017 taxable year. However, neither reliance on one's tax preparer to timely file its tax returns nor mere oversight qualify as reasonable cause. (*Appeal of Auburn Old Town Gallery, LLC, supra*, citing *Appeal of Quality Tax & Financial Services, Inc.*, 2018-OTA-130P.)

Appellant also points out that it believed it may not have had a filing requirement because two family members who were partners in the limited partnership later occupied the residential real properties held in the partnership (the properties had previously been used for rentals). Because there was no income to report and the family members "took care of the expenses",

⁷ Respondent is not asserting willful neglect in this case.

⁸ The late-filing penalty under R&TC section 19131 was not imposed for the 2014 taxable year because the penalty is only imposed where the amount required to be shown on the tax return is not paid on or before the date prescribed for payment, and appellant timely paid its \$800 annual tax for the 2014 taxable year.

⁹ Appellant states that "[on] May 1, 2019, a past due notice was sent for the 2015 California partnership return and after many attempts to get a response from the CPA again we consulted lawyers to help us. They were able to get the CPA to prepare the returns for the 5 years missing: both the 1065 forms and the forms for the Franchise Tax Board." Appellant further states that ". . . reliance on our longtime family CPA is reasonable; [the] trust that he was filing all necessary returns is reasonable; and since the Franchise Tax Board took five years to notify [appellant] of the failure to file, [the] lack of awareness is reasonable. And, finally, [appellant is] not guilty of 'willful neglect.' "

appellant “hoped this meant that no tax return might be needed.” However, the law is well-settled that even if the taxpayer is unaware of a filing requirement, ignorance of the law is not an excuse for failing to file a timely return. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) Moreover, the mere unsupported belief of a taxpayer that the taxpayer is not required to file a timely return, no matter how sincere that belief may be, is insufficient to constitute reasonable cause for failing to timely file. (*Appeal of Cremel and Koepfel*, 2021-OTA-222P.)

Finally, appellant contends that since the IRS abated some of the federal late-filing penalties, respondent should do so as well. Respondent provided information it received from the IRS that the IRS abated the federal late-filing penalty for appellant’s 2014 and 2016 taxable years¹⁰ under the IRS’s first-time abate policy. However, neither the California Legislature nor respondent have adopted a comparable penalty abatement program, so the IRS penalty abatement cannot be used as a basis for abatement of the state late-filing penalty at issue here. (*Appeal of Auburn Old Town Gallery, LLC, supra.*) Instead, appellant must establish that its failure to timely file its returns was due to reasonable cause, which it has failed to do.

Accordingly, appellant has failed to establish that the late-filing penalties should be abated.

Issue 2: Whether interest should be abated.

Interest must be assessed from the date a tax payment is due through the date that it is paid. (R&TC, § 19101.) Imposition of interest is mandatory; it is not a penalty, but it is compensation for a taxpayer’s use of money after it should have been paid to the state. (*Appeal of Moy*, 2019-OTA-057P.) There is no reasonable cause exception to the imposition of interest. (*Ibid.*) To obtain relief from interest, a taxpayer must qualify under the waiver provisions of R&TC sections 19104, 19112, or 21012. (*Ibid.*) The relief of interest under R&TC section 21012 is not relevant here, because respondent did not provide appellants with any written advice. Under R&TC section 19104, respondent is authorized to abate or refund interest if there has been an unreasonable error or delay in the performance of a ministerial or managerial act by an employee of respondent. Here, appellant has not alleged, and the record does not reflect, any such errors or delays.

¹⁰ Information provided by respondent indicates that the IRS did not abate the federal late-filing penalty for appellant’s 2015 and 2017 taxable years.

Respondent may grant a waiver of interest when it “determines that an individual or fiduciary demonstrates inability to pay that interest solely because of extreme financial hardship caused by significant disability or other catastrophic circumstance.” (R&TC, § 19112.) However, appellant is a limited partnership, not an individual or fiduciary, making R&TC section 19112 inapplicable to appellant. Additionally, appellant does not assert financial hardship and even if financial hardship were asserted, only respondent may determine when a waiver of interest is warranted upon a showing of extreme financial hardship, and we have no authority to review such a determination. (*Appeal of Moy, supra.*)

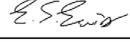
Accordingly, there is no basis for interest abatement.

HOLDINGS

1. The late-filing penalties are not abated.
2. Interest is not abated.

DISPOSITION

Respondent’s actions are sustained.

DocuSigned by:

Elliott Scott Ewing
Administrative Law Judge

We concur:

DocuSigned by:

Cheryl L. Akin
Administrative Law Judge

DocuSigned by:

Keith T. Long
Administrative Law Judge

Date Issued: 11/5/2021