

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**DLT VENTURES, LLC**

) OTA Case No. 21057886  
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**OPINION**

Representing the Parties:

For Appellant: DeAnn D. Stoner, CPA

For Respondent: Gi Jung Nam, Tax Counsel

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, DLT Ventures, LLC (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$600 for the 2019 taxable year.

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

**ISSUE**

Has appellant established a basis to abate the penalty for underpayment of estimated Limited Liability Company (LLC) fee (estimated fee penalty)?

**FACTUAL FINDINGS**

1. Appellant filed a timely LLC Return of Income for taxable year 2019, self-reporting an LLC fee of \$6,000.
2. Appellant paid an estimated LLC fee of \$6,000 late, on July 12, 2019.
3. FTB imposed a 10 percent estimated fee penalty of \$600, which appellant paid.
4. Appellant filed a claim for refund of the estimated fee penalty, which FTB denied.
5. This timely appeal followed.

## DISCUSSION

R&TC section 17942 imposes an LLC fee based on total California source income of LLCs that are doing business in California. The LLC fee is required to be estimated and paid on or before the 15th day of the sixth month of the taxable year. (R&TC, § 17942(d)(1).) If the estimated fee is not paid on time, a penalty of 10 percent of the amount of any underpayment must be added to the fee. (R&TC, § 17942(d)(2).) The statute does not provide for a reasonable cause exception to imposition of the estimated fee penalty. The only defense authorized by statute is the safe harbor provision, which provides that the penalty will not be imposed if the timely estimated LLC fee payment is equal to or exceeds the LLC fee due for the prior tax year. (R&TC, § 17942(d)(2); *Appeal of Summit Hosting*, 2021-OTA-216P.)

Appellant's payment for 2019, made on July 12, 2019, was late. Appellant does not claim that the estimated fee penalty was improperly calculated or imposed. Instead, appellant asks for abatement of the estimated fee penalty based on reasonable cause; namely, that two close relatives of appellant's manager (Manager) died within the two weeks preceding the payment due date.<sup>1</sup>

As stated above, there is no reasonable cause exception to the estimated fee penalty. Therefore, despite Manager's unfortunate circumstances in 2019, we cannot consider that as a basis to abate the penalty. Moreover, the safe harbor does not apply to appellant because it requires *timely* payment of the estimated LLC, which did not occur here.<sup>2</sup>

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<sup>1</sup> Appellant's argument is predicated on the principle that LLCs are fictional entities which may only act through their managers, employees, or agents.


<sup>2</sup> Our record does not reflect whether appellant's 2018 fee was equal to or greater than appellant's 2019 fee, but it makes no difference because the safe harbor does not apply.

HOLDING


Appellant has not established a basis to abate the estimated fee penalty.


DISPOSITION

FTB’s denial of appellant’s claim for refund is sustained.

DocuSigned by:  
  
Teresa A. Stanley  
Administrative Law Judge

We concur:

DocuSigned by:  
  
Nguyen Dang  
Administrative Law Judge

DocuSigned by:  
  
Josh Lambert  
Administrative Law Judge

Date Issued: 11/22/2021