

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

**ALLEN HARRISON MULTIFAMILY
FUND II LP**

) OTA Case No. 21078161
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OPINION

Representing the Parties:

For Appellant:

Russell D. Brown, CPA

For Respondent:

Brandon S. Knoll, Tax Counsel

A. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Allen Harrison Multifamily Fund II LP (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$9,936, plus interest paid, for the 2018 tax year.

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

ISSUES

1. Whether appellant has established reasonable cause for failing to timely file its tax return.
2. Whether appellant has established a basis for abatement of interest.

FACTUAL FINDINGS

1. On March 15, 2019, appellant timely paid the \$800 annual tax.
2. On June 29, 2020, appellant untimely filed its 2018 partnership return (Form 565) and related schedules on June 25, 2020. Appellant checked the box on the return that it was an “LP required to pay annual tax (is doing business in CA, is registered with SOS, or is organized in CA).” Additionally, appellant received a Schedule K-1 from AHC 1375 GP LLC, which appellant describes as its only investment in California.

3. Subsequently, respondent issued a Notice of Balance Due to appellant indicating that a late filing penalty of \$9,936 was imposed. Appellant remitted payment of the amount owed, plus interest.
4. Appellant filed a claim for refund requesting abatement of the late filing penalty. Respondent denied the claim.
5. This timely appeal followed.

DISCUSSION

Issue 1: Whether appellant has established reasonable cause for failing to timely file its tax return.

Every partnership doing business in California must file its tax return on or before the 15th day of the third month following the close of its tax year. (R&TC, §§ 17935, 18633.) R&TC section 19172 imposes a late filing penalty when a partnership (or an LLC treated as a partnership) fails to file a return by the time prescribed, unless the taxpayer can show that the failure is due to reasonable cause. The amount of the per-partner late filing penalty under R&TC section 19172 is computed by multiplying \$18 by the number of partners for each month, or fraction thereof, that the return is late (not to exceed 12 months). (R&TC, § 19172(a) & (b).)

Appellant makes a few arguments for its failure to timely file the return. Appellant contends that despite exercising ordinary business care and prudence, circumstances that caused the late filing were out of appellant's control. Appellant argues that because it did not have California-source income, it did not know it still had a filing requirement. Finally, appellant notes that it has a good filing history. We address each in turn.

To establish reasonable cause, the taxpayer must show that the failure to timely file occurred despite the exercise of ordinary business care and prudence, or that such cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of Summit Hosting LLC*, 2021-OTA-216P.) The taxpayer has a nondelegable duty to file its return on time. (*Ibid.*; see *U.S. v. Boyle* (1985) 469 U.S. 241, 247.) “The 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’ ” (*U.S. v. Boyle, supra*, at p. 252.)

Appellant argues that it acted reasonably when its CFO left the company in 2019 by transferring the filing responsibility to another individual. Although filing the California return

was inadvertently overlooked, appellant asserts that it filed the return immediately once it became aware that a return was not filed. However, appellant had a “fixed and clear” nondelegable duty to timely file a return by March 15, 2019. (*U.S. v. Boyle, supra*, 469 U.S. at p. 249.) Delegating the responsibility to another individual did not relieve appellant of that duty.

Moreover, 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.) Although appellant now concedes that it does have a filing requirement in California, appellant’s mistaken belief does not establish reasonable cause for the late filing of the return.

Lastly, regarding appellant’s reference to its good compliance history, unlike the federal First Time Penalty Abatement program, California has not adopted a comparable penalty abatement program. (*Appeal of Xie*, 2018-OTA-076P.) Thus, we cannot consider appellant’s good compliance history as a basis for reasonable cause.

Issue 2: Whether appellant has established a basis for abatement of interest.

Imposing interest on a tax deficiency is mandatory. (R&TC, § 19101(a).) Interest is not a penalty but is compensation for the taxpayer’s use of money after it should have been paid to the state, and it can only be abated in certain limited situations when authorized by law. (*Appeal of Moy*, 2019-OTA-057P.) There is no reasonable cause exception to the imposition of interest. (*Ibid.*)

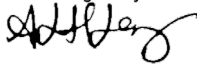
To obtain interest abatement or waiver, appellant must qualify under one of the following: R&TC section 19104 or 21012. R&TC section 19104 does not apply here because appellant does not allege, and the evidence does not show, that the interest at issue is attributable, in whole or in part, to any unreasonable error or delay by an officer or employee of respondent when performing a ministerial or managerial act. R&TC section 21012 does not apply because respondent did not provide appellant with any requested written advice. Thus, appellant has not established any basis for interest abatement for the tax year at issue.

HOLDINGS

1. Appellant has not established reasonable cause for failing to timely file its tax return.
2. Appellant has not established a basis for abatement of interest.

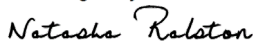
DISPOSITION

Respondent’s action is sustained.


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 Andrea L.H. Long
 Administrative Law Judge

We concur:

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 Natasha Ralston
 Administrative Law Judge

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 Amanda Vassigh
 Administrative Law Judge

Date Issued: 2/16/2022