

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 21119019  
**PORTLAND GARDENS LLC** )  
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**OPINION**

Representing the Parties:

For Appellant: Joseph C. Olson, EA

For Respondent: Leoangelo C. Cristobal, Tax Counsel

N. RALSTON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Portland Gardens, LLC (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$648 for the 2018 tax year.

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.1.) Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

**ISSUE**

Whether appellant has established reasonable cause to abate the per-partner late-filing penalty for the 2018 tax year.

**FACTUAL FINDINGS**

1. Appellant is an active Limited Liability Company (LLC), taxed as a partnership.
2. On May 12, 2021, respondent issued a notice to appellant stating that respondent had not received a tax return from appellant for the 2018 tax year.
3. On May 14, 2021, appellant filed its 2018 income tax return. Appellant reported having a maximum of three members during the year.

4. In a letter dated June 1, 2021, appellant advised respondent that the “Original Electronic transmission of 2018 Form 568 was corrupted, and the return was not properly filed.”
5. Respondent imposed a per-partner late-filing penalty of \$648, based on three members.
6. Appellant subsequently paid the amount due and filed a claim for refund requesting abatement of the penalty based on reasonable cause.
7. Respondent denied appellant’s claim for refund and this timely appeal followed.

### DISCUSSION

For the year at issue, R&TC section 18633.5(a) provides that 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 is required to file a return on or before the 15th day of the third month following the close of its taxable year. R&TC section 19172 imposes a per-partner late-filing penalty when a partnership (or an LLC taxed as a partnership) fails to file a return at the time prescribed unless it is shown that the failure was due to reasonable cause. The per-partner late-filing penalty under R&TC section 19172 is computed by multiplying \$18 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 three members during the 2018 tax year and filed its return approximately two years late on May 14, 2021. Therefore, respondent properly imposed a \$648 per-partner late-filing penalty (\$18 x 3 members x 12 months) for the 2018 tax year.

The per-partner 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 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.*) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Moren*, 2019-OTA-176P).<sup>1</sup> In *United States v. Boyle* (1985) 469 U.S. 241, 252, the Supreme Court held that “[t]he failure to

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<sup>1</sup> For purposes of the facts and issue in this appeal, an analysis of whether there is reasonable cause for a failure to timely file a tax return is substantially the same as an analysis of whether there is reasonable cause for a failure to timely pay tax. Thus, authorities persuasive or controlling in one analysis may be equally persuasive or controlling in the other. (See *Appeal of Moren*, *supra*; *Appeal of Triple Crown Baseball, LLC*, 2019-OTA-025P.)

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 . . . ." 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 per-partner late-filing penalty. Appellant states that its usual practice was to forward the necessary financial information to its tax preparer who would prepare appellant's return. The completed return was then sent to appellant for approval and once approved and authorization to file was provided to the tax preparer, appellant relied on the tax preparer to e-file the return using its software vendor. Appellant contends that its tax preparer attempted to timely file appellant's 2018 return using its computer filing service but that the software service mishandled appellant's return, despite assuring appellant's tax preparer that the return was submitted. Thus, appellant contends that it followed good business practices in filing its return and that it did not have control over the entire filing process that resulted in the late filing.

It is well established that each taxpayer has a non-delegable obligation to file a tax return by the due date, which is not excused by the taxpayer's reliance on a tax preparer. (See *United States v. Boyle*, *supra*, 469 U.S. at 249. See also *Appeal of Summit Hosting*, 2021-OTA-216P.) OTA finds that appellant has failed to establish that its failure to meet its tax filing obligation occurred despite the exercise of ordinary business care and prudence. Although appellant contends that the computer software company assured appellant's tax preparer that appellant's tax return was submitted, appellant acknowledges that the software company was unable to provide appellant with a confirmation number or other evidence showing that the return was accepted by respondent. Appellant has failed to establish what additional efforts it took, if any, to determine that its return had been filed and has not provided evidence of the assurance it claims its tax preparer received. OTA would expect an ordinarily intelligent and prudent businessperson to obtain confirmation that the return was properly filed and not simply rely on assurances. Because appellant did not take any steps to confirm that its return was properly filed, it remained unaware that its 2018 return had not been filed until approximately two years later, when it received notice from respondent. While OTA commends appellant for filing its return as soon as it was aware of the error, this does not constitute reasonable cause for appellant's failure to timely file its returns.

HOLDING

Appellant has failed to establish that reasonable cause exists to abate the per-partner late-filing penalty.

DISPOSITION

Respondent's action denying appellant's claim for refund for 2018 is sustained.

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*Natasha Ralston*  
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Natasha Ralston  
Administrative Law Judge

Date Issued: 5/26/2022