

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
GLOBAL MUSHROOMS

) OTA Case No. 21098584
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OPINION

Representing the Parties:

For Appellant: Shari Danann, CPA

For Respondent: Alisa L. Pinarbasi, Tax Counsel

For Office of Tax Appeals: Neha Garner, Tax Counsel III

N. RALSTON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Global Mushrooms (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$1,179 for the 2020 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 basis to abate the LLC late payment fee pursuant to R&TC section 17942.

FACTUAL FINDINGS

1. On August 5, 2020, appellant paid its LLC fee for the tax year ending December 31, 2020, in the amount of \$11,790.
2. Appellant's payment was untimely, and respondent issued a Notice of Balance Due which reflected a penalty of \$1,179.
3. Appellant paid the balance in full on May 3, 2021.
4. Appellant filed a claim for refund stating that it missed the deadline due to moving deadlines in relation to the COVID-19 pandemic and an anomaly with their tax software. Appellant claims it subsequently became aware that it had not paid the LLC fee and paid the balance due as soon as it became aware.
5. On June 28, 2021, respondent denied appellant's claim for refund because there is no reasonable cause exception to the LLC fee underpayment penalty.
6. Appellant then filed this timely appeal.

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).) Due to the COVID-19 pandemic, respondent postponed the deadline to July 15, 2020.¹ When the estimated payment of the LLC fee is less than the amount of LLC fee due for the taxable year, a penalty equal to 10 percent of the underpayment is imposed unless the fee amount that was timely estimated and paid was equal to or greater than the total amount of the LLC fee for the preceding taxable year. (R&TC, § 17942(d)(2).) The statute does not provide for a reasonable cause defense to imposition of the penalty. (*Appeal of Summit Hosting LLC*, 2021-OTA-216P.)

¹ <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2020-3-state-postpones-tax-deadlines-until-july-15-due-to-the-covid-19-pandemic.html>.

Here, because appellant's total income from all sources derived from, or attributable to, California was over \$5 million, the law requires an LLC fee of \$11,790 for the 2020 tax year.² Since appellant did not pay its estimated LLC fee by the July 15, 2020 postponed due date, a penalty of 10 percent of the amount of underpayment is imposed. The amount of the underpayment is equal to the difference between the total amount of the fee for the taxable year, less the timely estimated payment. Since appellant failed to make any timely payment of the LLC fee, the underpayment consisted of the entire fee of \$11,790. Therefore, respondent imposed an estimated LLC fee penalty of \$1,179 (i.e., \$11,790 x 10%).

R&TC section 17942(d)(2) provides that the only defense to the penalty authorized by statute is a 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. Here, appellant paid \$11,790 for the preceding tax year. Therefore, appellant needed to make a timely payment of \$11,790 by the July 15, 2020 postponed due date for the exception to apply. Because appellant did not make any timely payments of the LLC fee, the safe harbor is inapplicable and there is no basis for abating the penalty. While the COVID-19 pandemic undoubtedly created hardships for taxpayers, because appellant did not meet the postponed deadline and there is no reasonable cause exception to this penalty, the penalty cannot be abated.

Appellant also argues that the amount of the penalty is unreasonably high, "feels usurious," and equates to a 174% interest rate. R&TC section 17942(d)(2) imposes a penalty of 10 percent of the fee which is not timely paid. The penalty was properly computed here, and OTA does not have the authority to abate the penalty in full or in part due to equity or fairness. (*Appeal of Robinson* 2018-OTA-059P).

² The amount of the LLC fee is based on the following schedule provided in R&TC section 17942: (1) \$900 if the total income from all sources derived from, or attributable to, California for the taxable year is \$250,000 or more, but less than \$500,000; (2) \$2,500 if the total income from all sources derived from, or attributable to, California for the taxable year is \$500,000 or more, but less than \$1,000,000; (3) \$6,000 if the total income from all sources derived from, or attributable to, California for the taxable year is \$1,000,000 or more, but less than \$5,000,000; or (4) \$11,790 if total income from all sources derived from, or attributable to, California for the taxable year is \$5,000,000 or more. (R&TC, § 17942(a).)

HOLDING

Appellant has not established a basis to abate the LLC fee late payment penalty pursuant to R&TC section 17942.

DISPOSITION

Respondent's action is sustained.

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Natasha Ralston
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Natasha Ralston
Administrative Law Judge

Date Issued: 9/1/2022