

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 22029713
CHINCOTEAGUE INVESTMENT GROUP,)
LLC)
_____)

OPINION

Representing the Parties:

For Appellant: Samuel H. Gluck, CPA

For Respondent: Brian Werking, Tax Counsel III

N. RALSTON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Chincoteague Investment Group, LLC (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$1,207¹ for the 2020 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 that the underpayment of estimated limited liability company (LLC) fee penalty should be abated.
2. Whether appellant has established reasonable cause to abate the late payment penalty.
3. Whether appellant has established grounds to abate the accrued interest.

¹ Respondent has provided information to show that the correct amount at issue is \$1,210.69, which consists of an underpayment of estimated limited liability company (LLC) fee penalty of \$600.00, a late payment penalty of \$510.00, and interest of \$100.69.

FACTUAL FINDINGS

1. For the 2020 tax year, appellant was required to pay its annual \$800 LLC tax by July 15, 2020,² and to pay an LLC fee on or before March 15, 2021.³ Appellant's LLC fee for the 2020 taxable year was \$6,000.
2. Appellant filed a timely LLC Return for the 2020 tax year on September 10, 2021. While appellant timely paid the \$800 annual tax, appellant did not remit payment of the \$6,000 LLC fee until September 24, 2021.
3. Respondent processed appellant's return and imposed a late payment penalty of \$510 and an underpayment of estimated LLC fee penalty of \$600.
4. Appellant made a payment in December 2021, which satisfied appellant's 2020 liability.
5. Appellant subsequently filed a claim for refund of penalties and interest of \$1,207, which respondent denied.⁴
6. This timely appeal followed.

DISCUSSION

Issue 1: Whether appellant has established that the underpayment of estimated LLC fee penalty should be abated.

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).)

Section 17942(d)(2) provides for a penalty of 10 percent of the amount of the underpayment, which is equal to the difference between the total amount of the fee for the taxable year less the

² R&TC section 17941(c) requires payment of the annual \$800 LLC tax on or before the 15th day of the fourth month of the taxable year. Here, that would be April 15, 2020; however, due to the Covid-19 pandemic, respondent postponed the due date until July 15, 2020. See State Postpones Tax Deadlines Until July 15 Due to the Covid-19 Pandemic, <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>.

³ R&TC section 17942(c) requires payment of the LLC fee on the due date of the LLC return, which pursuant to R&TC section 18633.5(a), must be filed on or before the 15th day of the third month following the close of its taxable year. Here, that would be March 15, 2021. This is the applicable deadline for purposes of the late payment penalty. However, for purposes of the underpayment of estimated LLC fee penalty, appellant was also required to estimate and pay the LLC fee on or before the 15th day of the sixth month of the current taxable year. (See R&TC, § 17942(d).) Here, that would be June 15, 2020, which respondent similarly postponed to July 15, 2020, due to the Covid-19 pandemic.

⁴ As noted above, the correct amount at issue is \$1,210.69.

timely estimated LLC fee payment(s). The statute further provides for a “safe harbor” in which no penalty will apply if the amount of the timely paid estimated fee is equal to or greater than the LLC fee for the taxpayer’s preceding tax year. (R&TC, § 17942(d)(2).) The law does not provide a reasonable cause exception to this penalty. (R&TC, § 17942; *Appeal of Summit Hosting LLC*, 2021-OTA-216P)

Appellant does not contend that the underpayment of estimated LLC fee penalty was improperly imposed or computed, but rather, appellant argues that the penalty should be relieved because as a restaurant with large liquidity needs, appellant did not have the funds to timely pay the tax due to the Covid-19 pandemic. Appellant asserts that its business could have failed if appellant was forced to pay the fee and points out that appellant paid the taxes and fees later in the year. However, as previously noted, there is no reasonable cause exception to the imposition of the underpayment of estimated LLC fee penalty. The only defense authorized by statute is the safe harbor provision. This safe harbor provision is only available to taxpayers who make timely estimated LLC fee payments, and in this case, appellants made no such payment. (R&TC, § 17942(d)(2).) Therefore, the safe harbor provision is inapplicable, and there is no basis for abating the penalty.

Issue 2: Whether appellant has established reasonable cause to abate the late payment penalty.

R&TC section 19132 imposes a late payment penalty when a taxpayer fails to pay the amount shown as due on the return by the date prescribed for the payment of the tax. The late payment penalty may be abated if the taxpayer shows that the failure to make a timely payment of tax was due to reasonable cause and was not due to willful neglect. (R&TC, § 19132(a)(1).) To establish reasonable cause for a late payment of tax, a taxpayer must show that the failure to make a timely payment occurred despite the exercise of ordinary business care and prudence. (*Appeal of Scanlon*, 2018-OTA-075P). The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Triple Crown Baseball*, 2019-OTA-025P.) As to appellant’s burden, the applicable standard of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(c).) To meet this evidentiary standard, a party must establish by documentation or other evidence that the circumstances it asserts are more likely than not to be correct. (*Appeal of Rougeau*, 2021-OTA-335P.) Unsupported assertions are insufficient to satisfy a taxpayer’s burden of proof. (*Appeal of Porreca*, 2018-OTA-095P).

As noted above, appellant does not dispute the imposition or calculation of the penalty, but rather, appellant argues that the penalty should be abated because appellant had “large liquidity needs” and did not have the cash to pay the taxes due to the Covid-19 pandemic and the effects that Covid-19 had on the restaurant industry. A failure to pay will be considered due to reasonable cause if the taxpayer makes a satisfactory showing that it exercised ordinary business care and prudence in providing for the payment of its tax liability and was nevertheless either unable to pay the tax or would suffer undue hardship if it paid on the due date. (Treas. Reg. § 301.6651-1(c)(1); *Nasir v. Commissioner*, T.C. Memo. 2011-283.)⁵

While appellant undoubtedly faced difficulties during the Covid-19 pandemic, appellant bears the burden of proof. Here, appellant has failed to provide any evidence to support its assertions that it was unable to timely pay the LLC fee. Without such evidence, Office of Tax Appeals (OTA) is unable to determine that appellant’s failure to timely pay the fee was due to reasonable cause.

Issue 3: Whether appellant has established grounds for abatement of the accrued interest.

Imposition of interest is mandatory; it is not a penalty but is compensation for appellant’s use of money after it should have been paid to the state. (R&TC, §19101(a); *Appeal of Moy*, 2019-OTA-057P.) Interest can only be abated in certain limited situations when authorized by law. (*Appeal of Balch*, 2018-OTA-159P.) There is no reasonable cause exception to the imposition of interest. (*Appeal of Summit Hosting, LLC, supra*). To obtain relief from interest, appellant must qualify under R&TC section 19104, 19112, or 21012 (*Ibid.*)

Pursuant to 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 does not assert any such errors or delays occurred, nor does the record reflect any such errors or delays. Relief pursuant to R&TC section 21012 is not relevant here because respondent did not provide appellant with any written

⁵ Because California’s definition of a statutory term (here, “reasonable cause”) is based, in large part, upon the federal statute defining that term, “the interpretations and effect given [that term] by the federal courts are highly persuasive.” (*Rihn v. Franchise Tax Bd.* (1955) 131 Cal.App.2d 356, 360; see also *J. H. McKnight Ranch, Inc. v. Franchise Tax Bd.* (2003) 110 Cal.App.4th 978, 984, fn. 1.) Federal decisions are relevant regardless of “whether such decisions were rendered before or after the enactment of the state laws.” (*Andrews v. Franchise Tax. Bd.* (1969) 275 Cal.App.2d 653, 658.) And there is a “strong public policy favorable to interpreting” state tax statutes that are based upon federal statutes consistent with the interpretations of their federal analogs. (*Meanley v. McColgan* (1942) 49 Cal.App.2d 203, 209.)

advice. Although appellant's arguments could be construed as asserting relief from interest due to extreme financial hardship caused by significant disability or other catastrophic circumstance pursuant to R&TC section 19112, OTA does not have authority to review respondent's action for any abuse of discretion under the financial hardship provisions of R&TC section 19112. (See *Appeal of Moy, supra.*) Thus, OTA finds that appellant has not established any basis for waiver or abatement of interest.

HOLDINGS

1. Appellant has not established that the underpayment of estimated LLC fee penalty should be abated.
2. Appellant has failed to establish reasonable cause for failing to make timely payment of tax for the 2020 tax year.
3. Appellant has failed to establish grounds for abatement of interest.

DISPOSITION

Respondent's denial of appellant's claim for refund is sustained.

DocuSigned by:

Natasha Ralston

25F8FE08FF50478...

Natasha Ralston
Administrative Law Judge

We concur:

DocuSigned by:

Michael F. Geary

1A9B52EF88AC4C7...

Michael F. Geary
Administrative Law Judge

DocuSigned by:

Suzanne B. Brown

47F45ABE89E34D0...

Suzanne B. Brown
Administrative Law Judge

Date Issued: 9/28/2022