

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No. 220510357
AGRI-TURF DISTRIBUTING, LLC)	
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OPINION

Representing the Parties:

For Appellant:	Ye Ying Stella Xia, CPA
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For Respondent:	Justin Sung, Graduate Student Assistant
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For Office of Tax Appeals:	Joseph Auer, Graduate Student Assistant
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O. AKOPCHIKYAN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Agri-Turf Distributing, LLC (appellant) appeals an action by respondent Franchise Tax Board (FTB) 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, Office of Tax Appeals (OTA) decides this matter based on the written record.

ISSUE

Has appellant established a basis to abate the underpayment of estimated Limited Liability Company (LLC) fee penalty for the 2020 tax year?

FACTUAL FINDINGS

1. Appellant timely filed its LLC Return of Income (Form 568) for the 2020 tax year and reported \$800 of annual tax and an LLC fee of \$11,790.
2. Appellant timely paid the \$800 annual tax on July 15, 2020, but untimely paid its estimated LLC fee of \$11,790 on August 15, 2020.

3. FTB imposed a penalty of \$1,179 for the late payment of the estimated LLC fee.
4. Appellant filed a request for abatement of the penalty and, subsequently, paid the penalty on January 18, 2022.
5. FTB treated the abatement request as a claim for refund, which FTB denied.
6. This timely appeal followed.

DISCUSSION

LLCs are required to estimate and pay the LLC fee imposed under R&TC section 17942 on or before the 15th day of the sixth month of the taxable year. (R&TC, § 17942(d)(1).) However, FTB announced on March 18, 2020, that the deadline for the 2020 tax year was July 15, 2020, due to the COVID-19 pandemic.¹ If the estimated LLC fee is not paid on time, a penalty of 10 percent of the amount of the underpayment is added to the fee. (R&TC, § 17942(d)(2).) The statute does not provide for a reasonable cause exception to the imposition of the penalty. (*Ibid.*) The only defense authorized by statute is the safe harbor provision, which provides that the penalty will not be imposed if the estimated LLC fee that is timely paid is equal to or exceeds the LLC fee due for the prior tax year. (*Ibid.*; *Appeal of Summit Hosting LLC*, 2021-OTA-216P.)

Appellant contends that there is reasonable cause to abate the penalty because appellant relied on a CPA to keep track of its payments to FTB, and the CPA failed to (1) provide appellant a 2020 Estimated Fee for LLC form (Form 3536) and (2) instruct appellant to make the estimated payment. While OTA understands appellant's position, there is no reasonable cause exception for this penalty. Furthermore, the safe harbor provision does not apply because it requires a timely payment of the estimated LLC fee, which did not occur here. Therefore, there is no basis for abating the penalty.

¹ See FTB News Release, *State Postpones Tax Deadlines Until July 15 Due to the COVID-19 Pandemic* (March 18, 2020), available at: <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>.

HOLDING

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

DISPOSITION

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

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Ovsep Akopchikyan

Administrative Law Judge

Date Issued: 11/10/2022