

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
**JAI MAA PROPERTIES, LLC** ) OTA Case No. 220310076  
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**OPINION**

Representing the Parties:

For Appellant: Parminder Pau Dhingra

For Respondent: Ronald Hofsdal, Tax Counsel IV

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Jai Maa Properties, LLC (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$803 for the 2019 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**

1. Whether appellant has established reasonable cause for the abatement of the late-filing penalties imposed under R&TC sections 19131 and 19172.
2. Whether appellant has established that it is entitled to abatement of the underpayment of estimated LLC fee penalty imposed under R&TC section 17942(d)(2).

**FACTUAL FINDINGS**

1. On June 29, 2021, appellant, an LLC consisting of two members, filed an untimely 2019 return (Form 568) reporting an LLC fee of \$900 and the annual LLC tax of \$800. Appellants did not remit payment with the return.

2. Appellant was required to file its 2019 tax return by July 15, 2020.
3. On October 13, 2021, FTB issued a return information notice informing appellant of the balance due. FTB also imposed a late filing penalty under R&TC section 19131 of \$272.50, a per partner late-filing penalty under R&TC section 19172 of \$432, and an estimated LLC fee penalty of \$90, plus interest.
4. On November 10, 2021, appellant made a payment of \$1,700 and on November 22, 2021, appellant made a payment \$944.90,<sup>1</sup> satisfying the liability.
5. On November 29, 2021, appellant filed a timely claim for refund of \$803, requesting abatement of the penalties.<sup>2</sup> On March 8, 2022, FTB denied the claim for refund.
6. This timely appeal followed.

### DISCUSSION

#### Issue 1: Whether appellant has established reasonable cause for the abatement of the late-filing penalties imposed under R&TC sections 19131 and 19172.

When FTB imposes a penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) The burden of proof is on the taxpayer to provide credible and competent evidence supporting a claim of reasonable cause; otherwise the penalty cannot be abated. (*Ibid.*) 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 R&TC contains two penalties that are applicable when an LLC classified as a partnership for tax purposes files its return late. First, R&TC section 19131 imposes a late-filing penalty when a taxpayer fails to file its return on or before its due date, unless it is shown that the failure was due to reasonable cause and not willful neglect. The amount of the late-filing penalty imposed by R&TC section 19131 is equal to five percent of the tax and LLC fee due after

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<sup>1</sup> This amount includes payment of the penalties and accrued interest.

<sup>2</sup> Appellant claimed a refund of \$803. FTB imposed penalties totaling \$794.50. Although there is a difference, it does not affect OTA's analysis.

allowing for timely payments, for every month or fraction of a month the return is late, not to exceed 25 percent of the tax due. (R&TC, §§ 19131(a), 17942(c).)

A second penalty, imposed under R&TC section 19172 takes into account the fact that an LLC classified as a partnership is a pass-through entity. R&TC section 19172 imposes a per-partner, late-filing penalty when a partnership—or an LLC classified 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 amount of the per-partner, late-filing penalty under R&TC section 19172 is computed by multiplying \$18 by the number of partners by the number of months, or fraction thereof, that the return is late (not to exceed 12 months). (R&TC, 19172(a)(2).)

Here, there is no dispute that appellant filed its returns on or about June 29, 2021, well after the July 15, 2020 due date.<sup>3</sup> Appellant also does not dispute FTB’s calculation of the penalties imposed under section 19131 and 19172. Instead, appellant asserts that it filed a late return as a result of the Covid-19 pandemic, which, for appellant, included personal and familial infection. In some instances, illness or other personal difficulties may be considered reasonable cause if the taxpayers present credible and competent proof that they were continuously prevented from filing a tax return. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) However, appellant has not provided any evidence that both of its members were continuously prevented from filing a tax return as a result of the Covid-19 pandemic. Accordingly, appellant has not met its burden of proof. (*Appeal of Xie, supra.*)

Appellant also asserts that it always makes timely payments of tax and that 2020 was not a normal year. However, there is nothing in the R&TC, which would allow OTA to abate first-time timeliness penalties for the 2019 tax year.<sup>4</sup> Accordingly, appellant has not established that it is entitled to the abatement of the late-filing penalties imposed under R&TC sections 19131 and 19172.

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<sup>3</sup> See <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>.

<sup>4</sup> Revenue and Taxation Code section 19132.5 allows for the abatement of an individual’s first-time timeliness penalties. However, that section only applies to tax years beginning on or after January 1, 2022. (R&TC, § 19132.5(a)(1), (f).)

Issue 2: Whether appellant has established that it is entitled to abatement of the underpayment of estimated LLC fee penalty imposed under R&TC section 17942(d)(2).

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 15<sup>th</sup> day of the sixth month of the current taxable year. (R&TC, § 17942(d)(1).) When the estimated payment of the LLC fee is less than the amount of the 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).)


Here, FTB assessed a \$90 underpayment of estimated LLC fee penalty because appellant's \$900 LLC fee for the 2019 tax year was not paid by the June 15, 2019 due date. Appellant raises the same reasonable cause type contentions with respect to this penalty. However, R&TC section 17942 does not provide for a reasonable cause defense to imposition of the penalty. Instead, the only defense to the penalty authorized by statute is the safe harbor provision, which provides that the penalty will not be imposed if the fee amount that was timely estimated and paid is equal to or exceeds the LLC fee due for the prior tax year. (R&TC, § 17942(d)(2).) Appellant did not make any timely estimated payments of its LLC fee and makes no claim that it qualifies for the safe harbor. Hence, there is no basis to abate the penalty.

HOLDINGS

1. Appellant has not established reasonable cause for the abatement of the late-filing penalties imposed under R&TC sections 19131 and 19172.
2. Appellant has not established that it is entitled to abatement of the underpayment of estimated LLC fee penalty imposed under R&TC section 17942(d)(2).

DISPOSITION

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

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Keith T. Long  
Administrative Law Judge

Date Issued: 11/28/2022