

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

In the Matter of the Appeal of:  
**MY HOME SOLUTIONS LLC**

) OTA Case No. 22039867  
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**OPINION**

Representing the Parties:

For Appellant: Christina Wang, Representative

For Respondent: Christopher M. Cook, Tax Counsel

For Office of Tax Appeals: Deborah Cumins,  
Business Taxes Specialist III

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, My Home Solutions LLC (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$502.79 for the 2018 tax year.<sup>1</sup>

Appellant waived the right to an oral hearing; therefore, Office of Tax Appeals (OTA) decides the matter based on the written record.

**ISSUES**

1. Whether appellant has established a basis for abatement of the late payment penalty.
2. Whether appellant has established a basis for abatement of the underpayment of estimated tax penalty (estimated tax penalty).

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<sup>1</sup> Appellant requests a refund of \$592.79, but that amount includes \$90.00 that appears to relate to a different tax year. Under R&TC section 19331, if FTB fails to act on a claim for refund within six months after the claim is filed, the taxpayer may consider the claim disallowed and may appeal the deemed denial to Office of Tax Appeals (OTA). However, in order for R&TC section 19331 to apply, appellant’s claim would still need to meet the requirements of R&TC section 19322, which provides that every refund claim shall be in writing, signed by the taxpayer or its representative, and shall state the specific grounds on which the claim is founded. Here, appellant’s refund claim does not appear to meet the requirements of R&TC section 19322 because it is unclear what the \$90 relates to (e.g., whether it relates to a penalty imposed and for which tax year). Accordingly, the refund claim amount over which OTA has jurisdiction is \$502.79.

3. Whether appellant has established a basis for abatement of the collection cost recovery fee.

### FACTUAL FINDINGS

1. Appellant was formed as a Nevada limited liability company (LLC) and registered with the California Secretary of State to do business in California.
2. Appellant elected to be taxed as an S corporation and filed a timely California S Corporation tax return for the 2018 tax year. On that return, appellant reported total tax of \$800 (the minimum franchise tax) and claimed payments of estimated tax of \$800.
3. Because FTB's records indicated that the self-assessed \$800.00 minimum franchise tax was never paid, on August 12, 2020, FTB issued a Corporation Past Due Notice that reflected tax of \$800.00 and penalties of \$138.90, plus applicable interest.
4. FTB initiated collection action, and the amounts due for 2018 were satisfied by payments from third parties. The total amount collected of \$1,394.67 satisfied the tax due of \$800.00, a late payment penalty of \$149.89, an estimated tax penalty of \$30.90, a collection cost recovery fee of \$322.00, and applicable interest.<sup>2</sup>
5. Appellant filed a claim for refund of the penalties and collection cost recovery fee, but FTB denied appellant's claim for refund.
6. This timely appeal followed.

### DISCUSSION

#### Issue 1: Whether appellant has established a basis for abatement of 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. Generally, the date prescribed for the payment of the tax is the due date of the return (without regard to extensions of time for filing). (R&TC, § 19001.) The penalty may be abated if the taxpayer shows that the failure to timely pay the tax was due to reasonable cause and not due to willful neglect. (R&TC, § 19132(a).) 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.)

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<sup>2</sup> The penalties and fee total \$502.79, which is the amount appellant requests in its refund claim. Since there is no mention of the interest paid of \$96.62 in that claim, interest will not be discussed further.

Here, appellant's 2018 tax year minimum franchise tax of \$800.00 was due on March 15, 2019. However, FTB did not receive payment until 2021, when FTB initiated collection action. Appellant argues that it paid a CPA to keep track of the payments to FTB. Appellant explains that it was not aware that the tax payments were made late because appellant had already paid those amounts to its CPA, inferring that appellant had the expectation that the CPA would timely remit the tax payments. In addition, appellant asserts that its business has been suffering financially and requests a first-time waiver of the penalty.

However, every taxpayer has a personal, non-delegable duty to timely pay the amount due. (*Appeal of Scanlon*, 2018-OTA-075P.) Appellant does not assert, and the evidence in the record does not suggest, that the failure to make timely payment occurred despite the exercise of ordinary business care and prudence, such as appellant making an independent verification that the payment to FTB had been made by the CPA. (See *ibid.*) Therefore, appellant's argument does not constitute reasonable cause.

Furthermore, appellant's assertion that the business is suffering financially, and its request for a first-time waiver of the late payment penalty, are not sufficient grounds for abating the late payment penalty for the 2018 tax year. (See *Appeal of Scanlon*, *supra.*) Instead, the law provides that the California late payment penalty shall apply unless reasonable cause is shown. (R&TC, § 19132(a).)

OTA finds that appellant has not established a basis for abatement of the late payment penalty.

Issue 2: Whether appellant has established a basis for abatement of the estimated tax penalty.

An LLC subject to the franchise tax imposed by Part 11 of the R&TC must file a declaration of estimated tax and pay the estimated tax for each year, or part of a year, that it is qualified to do business in this state. (R&TC, §§ 19023, 19025.) If the amount of estimated tax does not exceed the \$800 minimum franchise tax (R&TC, § 23153(d)(1)), the entire amount of the estimated tax shall be due and payable on or before the fifteenth day of the fourth month of the taxable year. (R&TC, § 19025(a).) A corporation that underpays its estimated tax is penalized by an addition to tax equal to a specified rate of interest applied to the amount of the underpayment. (R&TC, §§ 19142, 19144.) There is nothing in the law that allows an entity relief from the penalty on a showing of reasonable cause or extenuating circumstances. (*Appeal of Scanlon*, *supra.*)

Appellant has not specifically addressed the estimated tax penalty. Rather, appellant makes the same reasonable cause arguments with respect to the late payment penalty, the estimated tax penalty and the collection cost recovery fee. To reiterate, there is no authority to abate the estimated tax penalty based solely on reasonable cause.<sup>6</sup> (*Appeal of Scanlon, supra.*) Appellant has not provided argument and the evidence in the record does not establish a basis for abating the estimated tax penalty. Therefore, OTA need not discuss appellant's reasonable cause argument as it relates to this penalty, and the estimated tax penalty should not be abated.

Issue 3: Whether appellant has established a basis for abatement of the collection cost recovery fee.

R&TC section 19254(a)(1) provides that if a taxpayer fails to pay any amount of tax, penalty, addition to tax, interest, or other liability imposed and delinquent, a collection cost recovery fee shall be imposed. Once properly imposed, the statute provides no grounds upon which the fee may be abated. (R&TC, § 19254.)

Appellant has raised no arguments specific to the collection cost recovery fee and evidence in the record does not reveal that the fee was invalid or improper. Accordingly, there are no grounds upon which the fee may be abated. (See *Appeal of Auburn Old Town Gallery, LLC*, 2019-OTA-319P.)

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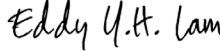
<sup>6</sup> There are limited exceptions to imposition of the penalty, but appellant does not allege, and the evidence does not show, that any of those apply to the facts before OTA. (R&TC, §19142(b).)

HOLDINGS


1. Appellant has not established a basis for abatement of the late payment penalty.
2. Appellant has not established a basis for abatement of the estimated tax penalty.
3. Appellant has not established a basis for abatement of the collection cost recovery fee.


DISPOSITION

FTB’s action in denying appellant’s claim for refund is sustained.

DocuSigned by:  
  
 Eddy Y.H. Lam  
 Administrative Law Judge

We concur:

DocuSigned by:  
  
 Keith T. Long  
 Administrative Law Judge

DocuSigned by:  
  
 Michael F. Geary  
 Administrative Law Judge

Date Issued: 12/22/2022