

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 220911421
JERICO JONES & ASSOCIATES LLC)
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OPINION

Representing the Parties:

For Appellant: Daniel E. Meza, Representative

For Respondent: Brian Werking, Tax Counsel III

A. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Jericho Jones & Associates LLC (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$776.77 for the 2018 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 reasonable cause for failing to timely file a 2018 tax return or for failing to timely pay its 2018 tax liability.
2. Whether appellant has established a basis for abatement of interest.

FACTUAL FINDINGS

1. Appellant is a California limited liability company (LLC). Its articles of organization were filed with the California Secretary of State on May 31, 2018.
2. On August 22, 2018, respondent sent to appellant a notice titled “Requirements for Limited Liability Companies” to inform appellant of its California tax obligations, which include estimating and paying the LLC annual tax and fee, and filing FTB Form 568, Limited Liability Company Return of Income.

3. On January 10, 2022, appellant untimely filed its 2018 Limited Liability Company Return of Income (Form 568). Appellant reported total income of \$0, annual LLC tax of \$800, total payments of \$0, and total tax and fee due of \$800. Appellant also reported that it had two members. Appellant did not remit payment with the return.
4. Respondent processed the tax return as filed and imposed a late payment penalty of \$200 and a late filing penalty of \$432.
5. Appellant paid the annual tax of \$800.00, and penalties and interest of \$776.67, satisfying appellant's liability.
6. Appellant subsequently filed a claim for refund for the late payment penalty, late filing penalty, and interest. Respondent denied the claim.
7. This timely appeal followed.

DISCUSSION

Issue 1: Whether appellant has established reasonable cause for failing to timely file a 2018 tax return or for failing to timely pay its 2018 tax liability.

Every LLC that is classified as a partnership for California tax purposes that is doing business in California, organized in California, or registered with the California Secretary of State must file a return on or before the 15th day of the third month following the close of its taxable year. (R&TC, § 18633.5(a).)

R&TC section 19172 imposes a late filing penalty when a partnership (or an LLC classified as a partnership) fails to file a return at the time prescribed. R&TC section 19132 imposes a late payment penalty when a taxpayer fails to pay the amount shown as due on the return on or before the due date of the return. Appellant does not dispute that the return was filed late or that it made a late payment of tax.

The late filing penalty and the late payment penalty will be abated if it is established that the tardiness was due to reasonable cause. (R&TC, §§ 19172(a), 19132(a).) 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 and to make a timely payment of tax occurred despite the exercise of ordinary business care and prudence. (*Ibid*; *Appeal of Moren*, 2019-OTA-176P.) The burden of proof is

on the taxpayer to provide credible and competent evidence supporting a claim of reasonable cause; otherwise, either penalty cannot be abated. (*Appeal of Xie*, 2018-OTA-076P; *Appeal of Moren*, *supra*.)

Appellant asserts that it was unaware that it had incorrectly filed its tax return for 2018 and that respondent's website did not reflect any amount was due for the 2018 tax year. Appellant states that this was its first time starting a business and that COVID-19 had halted its business. Appellant states that it discovered its mistake in late 2021, and filed its return and paid its tax liability shortly thereafter. Appellant asserts that it contacted respondent, which assured appellant that its issue was not unique, and respondent would be lenient. However, respondent later informed appellant that it could not grant the refund.

Although the Office of Tax Appeals is sympathetic to appellant's situation, it can only grant relief where the law specifically allows. (See *Appeal of Xie*, *supra*.) Ignorance of the law is not reasonable cause for failure to comply with statutory requirements. (*Appeal of Porreca*, 2018-OTA-095P.) A taxpayer that fails to acquaint itself with the requirements of California tax law has not exercised ordinary business care and prudence. (*Ibid*.)

Moreover, alleged statements by respondent's phone representatives are not authoritative sources of law. (See *Appeal of Sedillo*, 2018-OTA-101P.) Respondent is an administrative agency, and it does not have the legal authority to interpret a statute in such a way as to change its meaning or effect. (*Appeal of Collamore* (72-SBE-031) 1972 WL 2664.)

Accordingly, appellant has not established reasonable cause to abate the late filing penalty and the late payment penalty.

Issue 2: Whether appellant has established a basis for abatement of interest.

Imposing interest on a tax deficiency is mandatory. (R&TC, § 19101(a).) Interest is not a penalty but is compensation for the taxpayer's use of money after it should have been paid to the state, and it can only be abated in certain limited situations when authorized by law. (*Appeal of Moy*, 2019-OTA-057P.) There is no reasonable cause exception to the imposition of interest. (*Ibid*.)

The Office of Tax Appeals has jurisdiction to determine whether a taxpayer is entitled to the abatement of interest under R&TC sections 19104 and 21012. (*Appeal of Moy*, *supra*.) R&TC section 19104 does not apply here because appellant does not allege, and the evidence does not show, that the interest at issue is attributable to any unreasonable error or delay by an

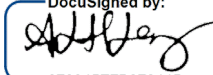
officer or employee of respondent when performing a ministerial or managerial act. R&TC section 21012 does not apply because respondent did not provide appellant with any requested written advice. Thus, there is no basis for interest abatement.

HOLDINGS

1. Appellant has not established reasonable cause for failing to timely file a 2018 tax return or for failing to timely pay its 2018 tax liability.
2. Appellant has not established a basis for abatement of interest.

DISPOSITION

Respondent’s action is sustained.

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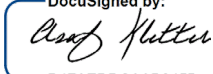
 Andrea L.H. Long
 Administrative Law Judge

We concur:

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 Administrative Law Judge

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 Asaf Kletter
 Administrative Law Judge

Date Issued: 7/31/2023