

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

In the Matter of the Appeal of: ) OTA Case No. 221011709  
**SAGE ADVISORY SERVICES LTD CO.** )  
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**OPINION**

Representing the Parties:

For Appellant: John R. Slais, CFO

For Respondent: David Muradyan, Tax Counsel IV

For Office of Tax Appeals: Nguyen Dang, Tax Counsel III

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Sage Advisory Services LTD Co. (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant's claim for refund of \$6,737.50 for the 2019 tax year.

Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

**ISSUE**

Whether the late-filing penalty should be abated.

**FACTUAL FINDINGS**

1. For the 2019 tax year, appellant, a limited liability company (LLC), elected to file a composite California non-resident income tax return (Return) on behalf of its nonresident members.<sup>1</sup> The Return included over \$200,000 of California source income.
2. The Return was untimely filed, and respondent imposed a late-filing penalty of \$6,737.50, plus interest.

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<sup>1</sup> In lieu of nonresident members filing individual income tax returns, an LLC doing business in, or deriving income from California, may elect to file a group return for one or more electing nonresident members and the LLC as agent for these members shall make the payments of tax, additions to tax, interest, and penalties otherwise required to be paid by the members. (R&TC, § 18535(a), (d).)

3. Appellant paid the outstanding balance due for the 2019 tax year and filed a refund claim seeking penalty abatement.
4. Respondent denied appellant's refund claim and this timely appeal followed.

### DISCUSSION

Appellant asserts that relief of the late-filing penalty is warranted due to difficulties in computing its California source income, which stemmed from a complicated fee structure “that makes it not readily apparent where its customers are for certain client relationships.” Appellant contends this initially caused it to erroneously determine that it did not have sufficient California source income to require the filing of a composite tax return. Appellant further asserts that there were “numerous COVID cases at the CPA firm and at [appellant’s] offices,” and that it was required to comply with unspecified federal government “mandates,” which further contributed to the untimely filing of the Return.

The late-filing penalty shall not apply if the late filing was due to reasonable cause and not willful neglect.<sup>2</sup> (R&TC, § 19131(a).) To establish reasonable cause, the taxpayer must show that the failure to timely file a return occurred despite the exercise of ordinary business care and prudence. (*Appeal of GEF Operating Inc.*, 2020-OTA-057P.) Unsupported assertions are insufficient to meet this burden. (*Ibid.*)

It is well settled that “general difficulty in making computations or determining taxable income with exactitude does not constitute reasonable cause for filing late.” (*Appeal of Xie*, 2018-OTA-076P.) Nor is reasonable cause abatement warranted where the late filing is due to an oversight or mistake by the taxpayer. (*Appeal of Quality Tax & Financial Services, Inc.*, 2018-OTA-130P.) Appellant asserts it had difficulties computing its California source income, but it has not indicated what problems it had in applying California’s market-based sourcing rules. Appellant only made a general statement that it was not certain “where its customers are,” while it ultimately reported over \$200,000 of California source income. Accordingly, the difficulty experienced by, and the initial error made by, appellant in computing its California source income do not constitute reasonable cause.

To establish reasonable cause due to hardship, taxpayers must also demonstrate that the hardship continuously prevented the timely filing of a return. (*Appeal of Belcher*,

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<sup>2</sup> Appellant does not dispute that the return was filed late, or that the late-filing penalty was correctly imposed, pursuant to R&TC section 19131.

2021-OTA-198P.) While appellant asserts that it experienced various hardships related to the COVID-19 pandemic, appellant has not provided evidence showing that these hardships *continuously prevented* appellant from timely filing the Return, as opposed to merely making the task more burdensome.

For the foregoing reasons, OTA finds that appellant has not shown reasonable cause to abate the late-filing penalty.

HOLDING

The late-filing penalty should not be abated.

DISPOSITION

Respondent’s action is sustained.

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*Veronica I. Long*  
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Veronica I. Long  
Administrative Law Judge

We concur:  
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Andrew J. Kwee  
Administrative Law Judge

DocuSigned by:  
*Ovsep Akopchikyan*  
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Ovsep Akopchikyan  
Administrative Law Judge

Date Issued: 7/28/2023