



- return states that it is for the fiscal year beginning on January 1, 2021, and ending on April 8, 2021, it is a final return, and appellant has four members.
3. FTB issued to appellant a Limited Liability Company - Notice of Balance Due imposing a per-partner late filing penalty of \$648 based on four members and a late payment penalty of \$88, plus interest. Appellant paid the amount due and filed a claim for refund.
  4. FTB denied appellant's claim for refund. This timely appeal follows.

### DISCUSSION

#### Issue 1: Whether appellant has established reasonable cause for the late filing of its return.

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 SOS shall file a return on or before the 15th day of the third month following the close of its taxable year. (R&TC, § 18633.5.) Alternatively, the LLC may file its return on or before the automatic extended due date, which is seven months after the original filing due date. (R&TC, § 18567(a)(2)(B); Cal. Code Regs., tit. 18, § 18567(a).) A “short period” return is required for any taxpayer that is in existence during only part of what would otherwise be its taxable year. (R&TC, § 24634(a)(2).)

R&TC section 19172 imposes a per-partner late filing penalty when a partnership (or an LLC treated 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 late filing penalty under R&TC section 19172 is computed at \$18 multiplied by the number of partners (or LLC members) for each month, or fraction thereof, that the return is late, up to a maximum of 12 months. (R&TC, § 19172(b).)

The per-partner late filing penalty will be abated if it is established that the late filing was due to reasonable cause. (R&TC, § 19172(a).) To establish reasonable cause, the taxpayer must show the failure to timely file a return occurred despite the exercise of ordinary business care and prudence, or that such cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of Fisher*, 2022-OTA-337P.) Ignorance of the law is not reasonable cause for the failure to file a timely return. (*Appeal of Cremel and Koepfel*, 2021-OTA-222P.)

When FTB imposes a penalty, the law presumes that the penalty was imposed correctly, and the burden of proof is on the taxpayer to establish otherwise. (*Appeal of Fisher, supra.*) The burden of proof is on the taxpayer to show that reasonable cause exists to support the abatement

of a penalty. (*Appeal of Xie*, 2018-OTA-076P.) In the absence of credible, competent, and relevant evidence showing error in FTB's determination, it must be upheld. (*Appeals of F.A.R. Investments, Inc. and Arciero & Sons, Inc.*, 2022-OTA-395P (*Appeals of F.A.R. and Arciero*).

As stated on its return, the close of appellant's taxable year was April 8, 2021. Appellant's return was therefore required to be filed on or before July 15, 2021, which was the 15th day of the third month following the close of its taxable year. (R&TC, § 18633.5.) Appellant does not dispute that it filed its return on April 13, 2022. FTB properly imposed the per-partner late filing penalty under R&TC section 19172, because appellant untimely filed its return.

Appellant does not contest the calculation of the per-partner late filing penalty. Instead, appellant argues that reasonable cause exists for its failure to timely file its return. Appellant asserts that it was unaware of the short tax year filing deadline because its members were first-time business owners. Appellant has failed to show that its failure to timely file its return occurred despite the exercise of ordinary business care and prudence. Appellant has not established entitlement to the abatement of the per-partner late filing penalty.

Issue 2: Whether appellant has established reasonable cause for the late payment of tax.

Every LLC that is doing business in California as defined in R&TC section 23101, has had its articles of organization accepted by the SOS, or has been issued a certificate of registration by the SOS is required to pay an annual tax to California for the privilege of doing business in California. (R&TC, § 17941(a).) The annual minimum tax is \$800. (R&TC, § 23153(d)(1).) An LLC must pay its annual tax on or before the 15th day of the fourth month of its tax year. (R&TC, § 17941(c).)

R&TC section 19132(a)(1)(A) 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. The late payment penalty may be abated if the taxpayer can show that the failure to make a timely payment of tax was due to reasonable cause and not due to willful neglect. (R&TC, § 19132(a).) To establish reasonable cause for the late payment of tax, the taxpayer must show that the failure to make a timely payment of the proper amount of tax occurred despite the exercise of ordinary business care and prudence. (*Appeal of Summit Hosting LLC*, 2021-OTA-219P.) Ignorance of the law does not constitute reasonable cause for a taxpayer's noncompliance with statutory requirements. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.)

As discussed above, the law presumes that FTB properly imposed a penalty, and the taxpayer has the burden of proof to establish otherwise. (*Appeal of Fisher, supra.*) The taxpayer also has the burden of proving that reasonable cause exists to support an abatement of a penalty. (*Appeal of Xie, supra.*) In the absence of credible, competent, and relevant evidence showing error in FTB's determination, it must be upheld. (*Appeals of F.A.R. and Arciero, supra.*)

As stated on its return, the start of appellant's taxable year was January 1, 2021. Appellant's payment of its annual tax of \$800 was due on or before April 15, 2021, which was the 15th day of the fourth month of its taxable year. (R&TC, § 17941(c).) Appellant does not dispute that it paid its annual tax of \$800 on April 13, 2022. FTB properly imposed the late payment penalty under R&TC section 19132, because appellant untimely paid its annual tax of \$800.

Appellant does not contest the calculation of the late payment penalty. Nor does it specifically argue that reasonable cause exists for its failure to timely pay its annual tax of \$800. For purposes of the late payment penalty, it is not relevant whether appellant was aware of the short tax year filing deadline, because its payment deadline was April 15, 2021, regardless of the length of its taxable year. Appellant's ignorance of the correct payment deadline does not establish reasonable cause for the late payment of tax. Appellant has not established that it is entitled to abatement of the late payment penalty.

With respect to both penalties at issue, appellant indicates that it was able to obtain waiver of unspecified penalties from the IRS for its federal income taxes. However, the record does not include evidence of an IRS determination or the basis for any such determination. Even if the IRS abated a late filing penalty or a late payment penalty for the 2021 tax year, presumably under the first-time abatement allowance, which appellant has failed to establish, OTA is not bound by any federal determination. (*Appeal of Lovinck Investments N.V., et al.*, 2021-OTA-294P.)

Furthermore, FTB's one-time abatement program, which permits it to abate timeliness penalties based on a taxpayer's good filing and payment history, only applies to individuals for the 2022 tax year and subsequent tax years.<sup>1</sup> For the 2021 tax year and LLCs, California law

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<sup>1</sup> R&TC section 19132.5, which is effective for tax years beginning on or after January 1, 2022, allows an individual taxpayer to request a one-time abatement of a timeliness penalty. As the 2021 tax year is at issue here and appellant is not an individual, this newly enacted provision is inapplicable.

only permits abatement of the late filing penalty and the late payment penalty based on a showing of reasonable cause.

HOLDINGS

1. Appellant has not established reasonable cause for the late filing of its return.
2. Appellant has not established reasonable cause for the late payment of tax.

DISPOSITION

FTB's action denying appellant's claim for refund is sustained.

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

Date Issued: 8/2/2023