

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 221212030
SILICON VALLEY DYNAMICS, LLC)
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OPINION

Representing the Parties:

For Appellant: Bin Zhou

For Respondent: Paige Chang, Tax Counsel

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

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Silicon Valley Dynamics, LLC (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$1,210.28 for the 2021 taxable year.

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

ISSUE

Whether the underpayment of the estimated LLC fee penalty, late payment penalty, and interest should be abated.

FACTUAL FINDINGS

1. On July 20, 2022, appellant paid its 2021 LLC fee and tax (totaling \$6,800), including interest and penalties; no other payments for the 2021 taxable year were made prior to this date.
2. For the 2020 taxable year, appellant reported an LLC fee of \$2,500.

3. On March 14, 2022, appellant scheduled an electronic payment for the \$6,800 amount due; this payment was unsuccessful. Consequently, respondent imposed a \$600 underpayment of estimated LLC fee penalty, a \$554 late payment penalty, plus interest.
4. On July 25, 2022, appellant filed a claim for refund requesting abatement of the penalties and interest, which respondent denied.

DISCUSSION

Appellant contends that it should be relieved of the penalties and interest because it had made all the necessary arrangements to timely pay the total tax and fee due and it should not be penalized for respondent's failure to process appellant's timely scheduled payment. Considering that the conditions for relief from each of these items are substantively different, they will be addressed separately below.

Underpayment of Estimated LLC Fee Penalty

LLCs doing business in California are required to estimate and pay an LLC fee on or before June 15th of the current taxable year. (R&TC, § 17942(d)(1).) When the estimated payment of the LLC fee is less than the amount due for the taxable year, a penalty of 10 percent of the underpayment is imposed. (R&TC, § 17942(d)(2).) However, a penalty shall not be imposed if the *amount timely paid* is equal to or greater than the LLC fee for the preceding taxable year. (*Ibid.*) There is no other basis for abating the penalty.

Here, appellant incurred an LLC fee of \$2,500 for the 2020 taxable year but did not make any 2021 estimated LLC fee payment by June 15, 2021. Appellant's contention concerning its scheduled payment on March 14, 2022, does not establish that it had made a timely 2021 *estimated* LLC fee payment. Therefore, relief of this penalty is not warranted.

Late Payment Penalty

The late payment penalty may be abated where the failure to make a timely payment was due to reasonable cause and not willful neglect. (R&TC, § 19132(a)(1).) To establish reasonable cause, the taxpayer must show that the failure to timely pay occurred despite the

exercise of ordinary business care and prudence. (*Appeal of Scanlon*, 2018-OTA-075P.)

Unsupported assertions are insufficient to meet this burden. (*Ibid.*)

Appellant provided no evidence indicating the cause of the payment failure. Therefore, it cannot be determined if the failure was, as appellant alleges, attributable to respondent or whether it was due to an oversight by appellant. In the latter case, it would not constitute reasonable cause. (*Appeal of Friedman*, 2018-OTA-077P.)

However, even if the failure was attributable to respondent, the exercise of ordinary business care and prudence requires taxpayers to do more than simply make the necessary arrangements for a payment to be processed. (*Appeal of Scanlon, supra.*) Taxpayers must also verify that the scheduled payment was in fact successful, and where it was not, they must take the appropriate corrective action. (*Ibid.*)

Appellant has not shown what, if any, actions it took to verify the status of its scheduled payment and what actions it took afterward to ensure the eventual success of that payment. The fact that appellant's payment was not received by respondent until July 20, 2022, more than four months after it was scheduled, suggests that appellant did not exercise due care in monitoring its bank account to ensure that the payment it had scheduled was in fact paid.

Accordingly, appellant did not establish reasonable cause for the late payment; hence, the late payment penalty cannot be abated.

Interest Abatement


The imposition of interest is mandatory and accrues on a tax deficiency regardless of the reason for the underpayment. (R&TC, § 19101(a); *Appeal of Balch*, 2018-OTA-159P.) There is no reasonable cause exception to the imposition of interest. (*Appeal of Moy*, 2019-OTA-057P.) Therefore, to obtain interest relief appellant must qualify under R&TC section 19104 (pertaining to unreasonable error or delay by respondent in the performance of a ministerial or managerial act), section 19112 (pertaining to extreme financial hardship caused by significant disability or other catastrophic circumstance), or section 21012 (pertaining to reasonable reliance on the written advice of respondent). (*Ibid.*) Appellant did not allege, and the record does not reflect, that any of these waiver provisions are applicable here. Therefore, there is no basis for abating interest.

HOLDING

The underpayment of estimated LLC fee penalty, late payment penalty, and interest is not abated.


DISPOSITION

Respondent’s action is sustained.


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Tommy Leung
Administrative Law Judge

We concur:

DocuSigned by:

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Josh Aldrich
Administrative Law Judge

DocuSigned by:

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Andrew Wong
Administrative Law Judge

Date Issued: 10/3/2023