

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 230312720
CARLYLE EQUITY INVESTORS LLC)
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OPINION

Representing the Parties:

For Appellant: Katherine D. Gibb, EA

For Respondent: Christopher T. Tuttle, Attorney

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Carlyle Equity Investors LLC (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$3,656 for the 2019 tax year.¹

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

ISSUE

Whether appellant has established reasonable cause to abate the per-partner late filing penalty under R&TC section 19172.

FACTUAL FINDINGS

1. Appellant is a limited liability company (LLC), classified as a partnership for income tax purposes. During the 2019 tax year, appellant had 16 members.
2. Through FTB’s Integrated Non-Filer Compliance program, FTB obtained information reported on a California Schedule K-1 indicating that appellant received California

¹ The claim of refund consists of a per-partner late filing penalty of \$3,456, and a notice and demand penalty of \$200. On appeal, FTB concedes that appellant timely responded to the Demand for Tax Return, and FTB will refund appellant the \$200 notice and demand penalty. As such, the only remaining issue in this appeal is the per-partner late filing penalty.

- source income during the 2019 tax year. However, FTB records indicated that appellant had not filed a California tax return for the 2019 tax year.
3. FTB sent a Demand for Tax Return (Demand) to appellant stating it had no record of receiving appellant's 2019 tax return. The Demand required appellant to respond by May 25, 2022, by filing a 2019 tax return, providing evidence that a 2019 tax return was already filed, or providing information establishing that it did not have a 2019 filing requirement.
 4. On May 23, 2022, appellant timely responded to the Demand by filing an untimely 2019 California Limited Liability Company Return of Income (Form 568), reporting the \$800 LLC annual tax.
 5. FTB did not immediately match appellant's tax return to appellant's account, which caused FTB to believe that appellant had not responded to the Demand. As a result, FTB issued a Notice of Proposed Assessment (NPA) to appellant on June 27, 2022. The NPA proposed the \$800 LLC annual tax, a demand penalty, a late filing penalty, and interest.²
 6. Later, FTB correctly matched appellant's tax return to appellant's account. As relevant to this appeal, FTB issued an LLC - Notice of Balance Due reflecting a per-partner late filing of \$3,456, a demand penalty of \$200, and applicable interest. Appellant remitted the payment in full and submitted a claim for refund. FTB denied the claim for refund.
 7. This timely appeal followed.
 8. On appeal, FTB concedes that appellant timely responded to the Demand and agrees to abate the demand penalty.

DISCUSSION

For the year at issue, R&TC section 18633.5(a) provides that 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 is required to file a return on or before the 15th day of the third month following the close of its taxable year.

As relevant to this appeal, R&TC section 19172 imposes a per-partner late filing penalty when a partnership—or an LLC classified 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 amount of the

² The NPA also imposed a filing enforcement cost recover fee of \$97; however, FTB subsequently abated or removed this fee.

per-partner late filing penalty under R&TC section 19172 is computed by multiplying \$18 by the number of partners and by the number of months, or fraction thereof, that the return is late (not to exceed 12 months). (R&TC, § 19172(a)(2), (b).) When FTB imposes a penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.)

Here, appellant does not contest whether the per-partner late filing penalty was properly imposed or computed. However, appellant asserts that the per-partner late filing penalty should be abated because its failure to timely file a return was due to reasonable cause and not willful neglect.

For penalty abatement purposes, 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; see *Appeal of Quality Tax & Financial Services, Inc.*, 2018-OTA-130P.) In other words, a taxpayer must show that the failure to meet its tax filing obligation occurred despite the exercise of ordinary business care and prudence. (*Appeal of Auburn Old Town Gallery, LLC, supra.*) The burden of proof is on the taxpayer to show that reasonable cause exists to support an abatement of the penalty. (*Appeal of Xie, supra.*) To overcome the presumption of correctness attached to the penalty, appellant must provide credible and competent evidence supporting a claim of reasonable cause; otherwise, the penalty cannot be abated. (*Ibid.*) Even if the taxpayer is unaware of a filing requirement, ignorance of the law is not an excuse for failing to file a timely return. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid.*)

Here, appellant asserts that it received an initial 2019 California Schedule K-1 from a lower-tiered partnership, and appellant did not at the time realize it had a California tax filing requirement. Appellant also asserts that its managers “always exercise ordinary business care and prudence with respect to US and state tax laws” and when contacted by FTB the “managers acted quickly and filed the required returns with applicable fees.” However, as noted above, even if the taxpayer is unaware of a filing requirement, ignorance of the law is not an excuse for failing to file a timely return. (*Appeal of GEF Operating, Inc., supra.*) Although appellant now concedes that it did have a filing requirement in California for the 2019 tax year, appellant's assertion that its mistaken belief at the time the tax return was not due does not establish reasonable cause to abate the per-partner late filing penalty. (*Ibid.*)

Additionally, appellant states that the COVID-19 pandemic impacted appellant and its tax preparer, causing appellant to be unable to meet its tax deadlines. Appellant specifically states that appellant’s “2019 missed [California] filing requirement was directly caused by office shutdowns, staffing issues related to health, wellbeing and family responsibilities,” and the additional responsibilities that appellant’s tax preparer had relating to assisting its clients with new tax legislation that was enacted in 2020. However, appellant’s arguments do not warrant a finding of reasonable cause. Here, due to the COVID-19 pandemic, FTB provided relief by postponing the filing deadline for the 2019 tax year from March 15, 2020, to July 15, 2020.³ However, appellant did not provide any evidence to show that it exercised ordinary business care and prudence in attempting to properly ensure that the 2019 California tax filing obligations were timely by July 15, 2020. Furthermore, while appellant contends that its late filing was a result of the COVID-19 pandemic, it does not provide any evidence to support this contention. Appellant’s unsupported assertions are insufficient to meet its burden of proof. (*Appeal of GEF Operating, Inc., supra.*) As such, appellant’s argument is unpersuasive and fails to demonstrate reasonable cause to abate the per-partner late filing penalty.

³ See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2020-3-state-postpones-tax-deadlines-until-july-15-due-to-the-covid-19-pandemic.html>.

HOLDING

Appellant has not established reasonable cause to abate the per-partner late filing penalty under R&TC section 19172.

DISPOSITION

FTB’s action is modified as conceded by FTB on appeal to abate the demand penalty. FTB’s action is otherwise sustained.

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Eddy Y.H. Lam
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Eddy Y.H. Lam
Administrative Law Judge

We concur:

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Veronica I. Long
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Veronica I. Long
Administrative Law Judge

DocuSigned by:
Cheryl L. Akin
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Cheryl L. Akin
Administrative Law Judge

Date Issued: 10/4/2023