

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
)
CORUNDUM DIVERSIFIED APARTMENT)
FUND IV AI, LLC)
)
)
)

OPINION

Representing the Parties:

For Appellant: Justin Leveille, Representative

For Respondent: AnaMarija Antic-Jezildzic, Specialist

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Corundum Diversified Apartment Fund IV AI, LLC (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$4,143.65 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 the abatement of the limited liability company (LLC) late filing penalty imposed under R&TC section 19172.
2. Whether appellant has established a basis to abate interest.

FACTUAL FINDINGS

1. FTB received an \$800 payment from appellant on May 28, 2018, for the 2018 tax year.
2. FTB mailed a Payment Received – Missing Tax Return letter to appellant.
3. Appellant untimely filed its 2018 Partnership Return of Income (return) on March 8, 2021, reporting a zero tax liability and a zero balance due.

4. FTB imposed an LLC late filing penalty of \$4,104, plus applicable interest, because the return was not filed by the due date of March 15, 2019, or by the extended due date of October 15, 2019.
5. FTB issued a Return Information Notice notifying appellant of the outstanding liability and collection action ensued. Appellant paid \$4,143.65 on September 17, 2021.
6. Appellant filed a claim for refund, arguing that the accounting firm appellant hired to prepare its tax return inadvertently left a box unchecked and that the return was never electronically filed, which caused the late filed return.
7. FTB denied appellant's claim for refund.
8. This timely appeal followed.

DISCUSSION

Issue 1: Whether appellant has established reasonable cause for the abatement of the LLC late filing penalty imposed under R&TC section 19172.

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. R&TC section 19172 imposes a per-partner late filing penalty when a partnership (or an LLC taxed 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 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).) 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.) 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. (*Ibid.*) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson

would have acted similarly under the circumstances. (*Appeal of Moren*, 2019-OTA-176P).¹ In *United States v. Boyle* (1985) 469 U.S. 241, 252, the Supreme Court held that “[t]he failure to make a timely filing of a tax return is not excused by the taxpayer’s reliance on an agent, and such reliance is not ‘reasonable cause’ for a late filing” The Supreme Court noted that one does not need to be a tax expert to know that tax returns have fixed filing dates and taxes must be paid when due. (*Id.* at p. 251.)

On appeal, appellant contends that it has established reasonable cause for filing its return late because the accounting firm appellant hired to file its tax return made an inadvertent error in leaving a box unchecked. This resulted in the failure to transmit the return electronically and appellant believed the return was timely filed until it received FTB’s notice indicating that no return had been received.

It is well established that each taxpayer has a non-delegable obligation to file a tax return by the due date, which is not excused by the taxpayer’s reliance on a tax preparer. (See *United States v. Boyle*, *supra*, 469 U.S. at 249; see also *Appeal of Summit Hosting*, 2021-OTA-216P.) The Office of Tax Appeals (OTA) finds that appellant has failed to establish that its failure to meet its tax filing obligation occurred despite the exercise of ordinary business care and prudence. Although appellant contends that the accounting firm inadvertently left a box unchecked that caused the late filing of appellant’s tax return, appellant has failed to establish what additional efforts it took, if any, to determine that its return had been timely filed, such as inquiring for an e-file confirmation page or email. OTA would expect an ordinarily intelligent and prudent businessperson to obtain confirmation that the return was properly filed and not simply rely on assurances. Because appellant did not take any steps to confirm that its return was properly filed, it remained unaware that its 2018 return had not been filed until approximately two years later, when it received notice from FTB. Therefore, appellant has not shown reasonable cause to abate the LLC late filing penalty.

¹ For purposes of the facts and issue in this appeal, an analysis of whether there is reasonable cause for a failure to timely file a tax return is substantially the same as an analysis of whether there is reasonable cause for a failure to timely pay tax. Thus, authorities persuasive or controlling in one analysis may be equally persuasive or controlling in the other. (See *Appeal of Moren*, *supra*; *Appeal of Triple Crown Baseball, LLC*, 2019-OTA-025P.)

Issue 2: Whether appellant has established a basis to abate interest.

Interest generally must be assessed from the date a payment is due through the date that it is paid. (R&TC, § 19101.) Imposition of interest is mandatory. (*Appeal of Moy*, 2019-OTA-057P.) It is not a penalty; rather, it is compensation for a taxpayer's use of money that should have been paid to the state. (*Ibid.*) Generally, to obtain relief from interest, a taxpayer must qualify under R&TC section 19104, 19112, or 21012.² (*Appeal of Balch*, 2018-OTA-159P.) Appellant does not allege that any of the three statutory provisions for interest abatement apply to the facts of this case, and OTA concludes based on the evidence in the record that none of these statutory provisions apply. Therefore, FTB properly imposed interest and OTA has no basis to abate it.

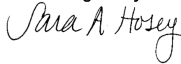
² Under R&TC section 19104, FTB is authorized to abate or refund interest if there has been an unreasonable error or delay in the performance of a ministerial or managerial act by an FTB employee. Under R&TC section 19112, FTB may waive interest for any period for which FTB determines that an individual has extreme financial hardship. OTA does not have authority to review extreme financial hardship determinations. (See *Appeal of Moy, supra.*) Under R&TC section 21012, a taxpayer may be relieved from interest if the taxpayer reasonably relied on written advice from FTB in response to a written request.

HOLDINGS


1. Appellant has not established reasonable cause to abate the LLC late filing penalty imposed under R&TC section 19172.
2. Appellant has not established a basis to abate interest.


DISPOSITION

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

DocuSigned by:

 6D3FE4A0CA514E7...
 Sara A. Hosey
 Administrative Law Judge

We concur:

DocuSigned by:

 67F043D83EF547C...
 Sheriene Anne Ridenour
 Administrative Law Judge

DocuSigned by:

 1EAB8BD43924477...
 Eddy Y.H. Lam
 Administrative Law Judge

Date Issued: 5/22/2023