

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 221011671
PALWOL LLC)
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OPINION

Representing the Parties:

For Appellant: Lena Park, Representative

For Respondent: Alisa L. Pinarbasi, Attorney

For Office of Tax Appeals: Casey Green, Attorney

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Palwol LLC (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claims for refund of \$932.45 for the 2019 tax year, and \$930.72 for the 2020 tax year.¹

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

ISSUES

1. Whether appellant had an obligation to pay the annual limited liability company (LLC) tax for the 2019 and 2020 tax years.
2. Whether the late payment penalties should be abated.
3. Whether interest should be abated.

¹ Appellant filed two FTB Forms 2924, Reasonable Cause – Business Entity Claim for Refund requesting a refund of \$892 for tax year 2019, and \$908 for tax year 2020. However, in FTB’s Limited Liability Past Due Notice dated April 25, 2022, FTB assessed a total of \$932.45 (\$800 tax + \$96 late payment penalty + \$36.45 interest) for the 2019 tax year and \$930.72 (\$800 tax + \$96 late payment penalty + \$34.72 interest) for the 2020 tax year. The Office of Tax Appeals determines that the correct amount relating to appellant’s claim for refund is \$932.45 for the 2019 tax year and \$930.72 for the 2020 tax year.

FACTUAL FINDINGS

1. On December 5, 2019, appellant organized and filed Articles of Organization with the California Secretary of State (SOS) as a domestic LLC. As of May 25, 2022, appellant had not filed a certificate of cancellation with the SOS.
2. On August 20, 2021, appellant filed an LLC Return of Income (Form 568) for both the 2019 tax year and the 2020 tax year. As indicated in both tax years' Form 568, appellant is a California LLC classified as a single-member LLC, wholly owned by an individual for the tax years at issue.
3. For the 2019 tax year, appellant reported on Form 578 an annual LLC tax liability of \$800, and penalties and interest of \$92. Appellant paid \$892 on August 24, 2021.² For the 2020 tax year, appellant reported on Form 568 an annual LLC tax liability of \$800, and penalties and interest of \$108. Appellant paid \$908 on August 24, 2021.³
4. On February 21, 2022, appellant filed two FTB Forms 2924, Reasonable Cause – Business Entity Claim for Refund, requesting a refund of \$892 for tax year 2019, and \$908 for tax year 2020.
5. On July 21, 2022, FTB denied appellant's claims for refund for both the 2019 and 2020 tax years.
6. This timely appeal followed.

DISCUSSION

Issue 1: Whether appellant had an obligation to pay the annual LLC tax for the 2019 and 2020 tax years.

As applicable to the tax years at issue, every LLC is required to pay an \$800 annual tax to California for the privilege of doing business in this state, if one of three requirements is met: (1) the LLC is “doing business” in this state as defined in R&TC section 23101; (2) the LLC's Articles of Organization have been accepted by the SOS; or (3) a Certificate of Registration has been issued by the SOS. (R&TC, § 17941(a) & (b); *Appeal of Patient Comfort Services, LLC*,

² On April 25, 2022, appellant paid the remaining penalties and interest assessed by FTB in the amount of \$40.45 for the 2019 tax year. Appellant's claim for refund did not include this amount.

³ On April 25, 2022, appellant paid the remaining penalties and interest assessed by FTB in the amount of \$22.72 for the 2020 tax year. Appellant's claim for refund did not include this amount.

2021-OTA-300P.) In relevant part, the annual LLC tax must be paid for each taxable year, or part thereof, until a certificate of cancellation of the LLC is filed with the SOS. (R&TC, § 17941(b)(1).) The annual LLC tax is due “on or before the 15th day of the fourth month of the taxable year.” (R&TC, § 17941(c).) There is no reasonable cause exception to the imposition of the annual LLC tax. (*Appeal of Patient Comfort Services, LLC, supra.*)

There is no dispute that appellant filed its Articles of Organization in California on December 5, 2019, which was accepted by the SOS. In addition, as of May 2022, appellant had not filed a certificate of cancellation with the SOS. Therefore, pursuant to R&TC section 17941(b), appellant was liable for the LLC annual tax in an amount equal to the applicable amount specified in R&TC section 23153(d), for the 2019 and 2020 tax years.

On appeal, appellant argues that it is not liable for the LLC tax for either tax year 2019 or 2020 and is due a refund. Appellant supports its contention by stating that it had no business activities during the 2019 and 2020 tax years due to the COVID-19 pandemic.

As relevant to this appeal, no annual LLC tax is due if either R&TC section 17946 or R&TC section 17947 applies. Under R&TC section 17946, no annual LLC tax is due if two conditions are met: (1) the LLC did no business in this state during the taxable year and (2) the tax year was 15 days or less. Under R&TC section 17947(a), no annual LLC tax is due if the LLC does all of the following: (1) files with FTB a timely final annual tax return for the preceding taxable year; (2) does not do business in this state after the end of the taxable year for which the final annual tax return was filed; and (3) files a certificate of dissolution with the SOS before the end of the 12-month period beginning with the date the final annual tax return was filed.

Here, R&TC section 17946 is only applicable if the LLC’s tax year was 15 days or less. In this case, appellant officially organized with the SOS as a California LLC on December 5, 2019, and there is no evidence to suggest that the appellant has submitted a certificate of cancellation to the SOS during any of the tax years at issue. (See R&TC, § 23101(b)(1).) Therefore, appellant’s tax years for both 2019 (December 5, 2019, through December 31, 2019) and 2020 (January 1, 2020, through December 21, 2020) is greater than 15 days. Additionally, R&TC section 17947 is not applicable due to appellant’s failure to meet all of the requirements of the code. Specifically, appellant did not file a timely final tax return and did not file a certificate of dissolution with the SOS during any of the taxable years at issue.

(See R&TC, § 17947(a)(1), (3).) Therefore, appellant failed to meet the requirements of R&TC sections 17946 and 17947 and must pay the \$800 LLC annual tax for both tax years at issue.

Issue 2: Whether the late payment penalties should be abated.

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. Every LLC which is disregarded for tax purposes, owned by an individual, and doing business in California must file a return on or before the 15th day of the fourth month following the close of its tax year. (R&TC, § 18633.5(i)(1), (3)(A).) The annual LLC tax is due and payable on or before the 15th day of the fourth month of the taxable year. (R&TC, § 17941(c).) Appellant untimely paid its annual LLC tax for the 2019 and 2020 tax years; therefore, the late payment penalties were properly imposed. 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 Triple Crown Baseball LLC*, 2019-OTA-025P.)

Here, appellant does not dispute that its payments were late. Appellant repeats the same argument that it is not liable for the annual LLC tax at issue because it conducted no business transactions due to COVID-19 pandemic closures. However, as noted above, appellant failed to meet the requirements of R&TC sections 17946 and 17947 and is subject to the \$800 LLC annual tax for both the 2019 and 2020 tax years. Furthermore, appellant has not provided evidence that its failure to make a timely payment of the proper amount of tax occurred despite the exercise of ordinary business care and prudence. Therefore, appellant has failed to show that it had reasonable cause for the late payments such that the penalties should be abated.

Issue 3: Whether interest should be abated.

Interest must be assessed from the date a tax payment is due through the date that it is paid. (R&TC, § 19101.) Imposition of interest is mandatory; it is not a penalty but is compensation for appellant's use of money after it should have been paid to the state. (*Appeal of Moy*, 2019-OTA-057P.) Interest can only be abated in certain limited situations when authorized by law. (R&TC, § 19101(a); *Appeal of Balch*, 2018-OTA-159P.) There is no reasonable cause

exception to the imposition of interest. (*Appeal of Summit Hosting, LLC*, 2021-OTA-216P.) To obtain relief from interest, appellant must qualify under R&TC section 19104, 19112, or 21012 (*Ibid.*) However, there is no evidence or argument that any of these statutory provisions apply.⁴ Thus, we find that appellant has not established any basis for waiver or abatement of interest.

HOLDINGS

1. Appellant had an obligation to pay the annual LLC tax for the 2019 and 2020 tax years.
2. The late payment penalties should not be abated.
3. Interest should not be abated.

DISPOSITION


FTB’s actions are otherwise sustained.

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 Eddy Y.H. Lam
 Administrative Law Judge

We concur:

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 Natasha Ralston
 Administrative Law Judge

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 Teresa A. Stanley
 Administrative Law Judge

Date Issued: 11/15/2023

⁴ Pursuant to 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 employee of FTB. Here, appellant does not assert any such errors or delays occurred. Relief pursuant to R&TC section 21012 is not relevant here because FTB did not provide appellant with any written advice. Relief pursuant to R&TC section 19112 is not relevant here because appellant does not allege extreme financial hardship caused by significant disability or other catastrophic circumstance.