

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
MANESH LLC) OTA Case No. 230814006
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OPINION

Representing the Parties:

For Appellant: H. Manesh, Representative

For Respondent: Eric R. Brown, Attorney

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Manesh LLC (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claims for refund of \$407.04 for the 2017 tax year; \$382.07 for the 2018 tax year; \$338.08 for the 2019 tax year; \$239.67 for the 2020 tax year; and \$113.45 for the 2021 tax year.¹

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.05.) Appellant waived the right to an oral hearing; therefore, the Office of Tax Appeals (OTA) decides this matter based on the written record.

ISSUES

1. Whether appellant has established reasonable cause for the late payment penalty imposed under R&TC section 19132 for the 2017 through 2021 tax years (tax years at issue).
2. Whether interest can be abated for the tax years at issue.

¹ Appellant’s request for refund amounts has been adjusted to reflect FTB’s cancellation of liabilities corresponding to various tax years: \$0.16 for 2017 tax year; \$0.19 for 2018 tax year; \$0.11 for 2020 tax year; and \$0.11 for 2021 tax year.

FACTUAL FINDINGS

1. On June 2, 2017, appellant, a California limited liability company (LLC), filed its Articles of Organization with the California Secretary of State. Appellant operates as a disregarded single-member LLC (SMLLC) for federal and California tax purposes.
2. For each of the tax years at issue, appellant did not timely file a California LLC tax return (Form 568).
3. On September 1, 2021, FTB issued a Notice of Suspension or Forfeiture to appellant, stating that appellant's California corporate rights, powers, and privileges were suspended because it failed to file a California tax return.
4. On February 2, 2023, appellant untimely filed its Form 568 for each tax year at issue.
5. For each of the tax years at issue, appellant filed its claims for refund with FTB, requesting abatement of penalties and interest. Appellant explained that it mistakenly thought that filing a California Resident Income Tax Return (Form 540) and reporting the SMLLC information and income on Form 540 was sufficient to comply with the law.
6. FTB denied appellant's claims for refund.
7. This timely appeal followed.

DISCUSSION

Issue 1: Whether appellant has established reasonable cause for the late payment penalty imposed under R&TC section 19132 for the tax years at issue.

R&TC section 19132 imposes a late payment penalty when a taxpayer fails to pay the amount required to be shown on the return by the date prescribed for the payment of the tax. Generally, the date prescribed for the payment of the tax is the due date of the return (without regard to extensions of time for filing). (R&TC, § 19001.)

The late payment penalty may be abated if a taxpayer shows that the failure to make a timely payment of tax was due to reasonable cause and was not due to willful neglect. (R&TC, § 19132(a)(1).) To establish reasonable cause for a late payment of tax, a taxpayer must show that the failure to make a timely payment occurred despite the exercise of ordinary business care and prudence. (*Appeal of Rougeau*, 2021-OTA-335P). The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid.*) The applicable standard of proof is by a preponderance of the

evidence. (*Ibid.*) To meet this evidentiary standard, a party must establish by documentation or other evidence that the circumstances it asserts are more likely than not to be correct. (*Ibid.*)

Appellant does not contest whether the late payment penalty was properly imposed or computed. Instead, appellant asserts a lack of knowledge and misunderstanding that a disregarded SMLLC has its own separate California filing obligation and is subject to the annual tax and LLC fee. (See R&TC, §§ 17941, 17942.) However, as noted above, the late payment penalty is imposed unless the failure to pay the amount required to be shown on the return by the return due date is due to reasonable cause. Ignorance of the law does not excuse compliance with statutory requirements. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) Here, a review of the record does not show that appellant took steps to ascertain its tax filing and payment obligations in California as a disregarded SMLLC prior to the due date.² Therefore, appellant has not established reasonable cause to abate the late payment penalty.

Issue 2: Whether interest can be abated for the tax years at issue.

If any amount of tax is not paid by the due date, interest is required to be imposed from the due date until the date the taxes are paid. (R&TC, § 19101(a).) Interest is not a penalty but is compensation for the taxpayer's use of money that should have been paid to the state. (*Appeal of Balch*, 2018-OTA-159P.) Imposition of interest is mandatory, and it can only be abated in certain limited situations when authorized by law. (R&TC, § 19101(a); *Appeal of Balch, supra.*) There is no reasonable cause exception to the imposition of interest. (*Appeal of Moy*, 2019-OTA-057P.) Rather, to obtain relief from interest, appellant must qualify under R&TC sections 19104 or 21012.³ Under R&TC section 19104, FTB is authorized to abate interest if there has been an unreasonable error or delay in the performance of a ministerial or managerial act by an employee of FTB. Appellant does not assert, nor does the record show, that FTB committed such errors or delays. R&TC section 21012 is also not relevant here because evidence in the record does not demonstrate that FTB provided appellant with any written advice. Accordingly, appellant is not entitled to interest abatement for the tax years at issue.

² For example, these steps could have included consulting with a qualified tax professional for substantive advice after disclosing all relevant facts. (See *U.S. v. Boyle* (1985) 469 U.S. 241.)

³ FTB may grant a waiver of interest when it determines that an individual or fiduciary demonstrates inability to pay that interest solely because of extreme financial hardship caused by significant disability or other catastrophic circumstance. (R&TC, § 19112.) However, OTA has no jurisdiction to determine whether a taxpayer is entitled to abatement of interest under R&TC section 19112. (*Appeal of Moy, supra.*)

HOLDINGS

1. Appellant has not established reasonable cause for the late payment penalty imposed under R&TC section 19132 for the tax years at issue.
2. Interest cannot be abated for the tax years at issue.

DISPOSITION

FTB's action in denying appellant's claims for refund is sustained.

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

Date Issued: 5/8/2024