

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
WITTY ACRONYM, LLC )  
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OTA Case No. 240215368

**OPINION**

Representing the Parties:

For Appellant: Will Shivers

For Respondent: Yadi Li, Graduate Student Assistant

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Witty Acronym, LLC (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$820.89 for the 2019 tax year.<sup>1</sup>

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 matter is being decided based on the written record.

**ISSUES**

1. Whether appellant has established a basis to abate the per-partner late filing penalty.
2. Whether appellant has established a basis to abate the late payment penalty.

**FACTUAL FINDINGS**

1. On February 23, 2017, appellant filed Articles of Organization of Limited Liability Company (LLC) with the Secretary of State (SOS).

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<sup>1</sup> On appeal, appellant asserts that the amount at issue is \$748, which is the total amount of the two penalties. It appears that the difference between \$748 and \$820.89 is accrued interest. Therefore, OTA addresses both penalties. Appellant does not address interest and, therefore, it will not be discussed.

2. On July 14, 2020, appellant made a payment of \$800 to FTB for the 2019 tax year.
3. Because appellant did not file a 2019 tax return, FTB issued a Request for Past Due LLC Tax Return on September 8, 2022, requesting appellant to respond by filing its return or by completing a questionnaire if a return was already filed or if appellant was unsure if it had a filing requirement.
4. After appellant did not respond, FTB issued a Demand to File LLC Tax Returns on November 22, 2022, requiring appellant to file its past due 2019 return and pay its 2019 balance due within 30 days.
5. On February 13, 2023, appellant filed a 2019 LLC Return of Income (Form 568), reporting no income, an annual LLC tax of \$800, and no amount due.<sup>2</sup>
6. On July 24, 2023, FTB issued an LLC Past Due Notice that imposed a late payment penalty of \$100 and a per-partner late filing penalty of \$648, plus interest.
7. Appellant paid the balance due and filed a claim for refund of \$820.89 for tax year 2019, which FTB denied.
8. This timely appeal followed.

### DISCUSSION

#### Issue 1: Whether appellant has established a basis to abate the per-partner late filing penalty.

For the tax year at issue, R&TC section 18633.5(a) provides that every LLC 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).) 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,

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<sup>2</sup> There is no dispute that appellant elected to be taxed as a partnership for the tax year at issue.

the taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid*).

As an LLC registered with the California Secretary of State, appellant was required to file its return for the 2019 tax year by July 15, 2020, but did not file it until February 13, 2023.<sup>3</sup> Appellant does not dispute that it filed late, and there is no dispute that the per-partner late filing penalty was properly calculated and imposed. And while appellant provides arguments related to the late payment of tax, appellant does not provide any arguments to show reasonable cause for the late filing of the return. Appellant asserts that delays in payment were due to FTB's "unreliable, archaic and negligent" mailing of personal identification numbers (PINs) for taxpayers to access their "MyFTB" online accounts. However, appellant has not shown how access to its MyFTB account or FTB's mailing of its PIN is related to the delay in filing its return or why such circumstances resulted in a filing delay of nearly three years because myFTB is not used or required to file tax returns.<sup>4</sup> Therefore, appellant has not shown that the per-partner late filing penalty should be abated.

Issue 2: Whether appellant has established a basis to abate the late payment penalty.

An LLC registered with the California Secretary of State must pay an annual LLC tax of \$800 on or before the 15th day of the fourth month of the LLC's tax year. (R&TC, § 17941(b)(1), (c).) R&TC section 19132 imposes a late payment penalty on an LLC that fails to pay the annual LLC tax of \$800 by the due date unless it is shown that the failure is due to reasonable cause and not due to willful neglect. Reasonable cause exists when the taxpayer acted as an ordinarily intelligent and prudent businessperson would have acted under similar circumstances. (*Appeal of Triple Crown Baseball, LLC, 2019-OTA-025P.*) 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.*)

Appellant is registered with the California Secretary of State and was therefore required to pay its annual LLC tax of \$800 on or before April 15, 2019. However, appellant did not pay

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<sup>3</sup> In response to COVID-19, FTB postponed to July 15, 2020, the filing and payment deadlines for all individuals and business entities for returns and return payments for the 2019 tax year, but it did not postpone the payment due dates for LLC taxes and fees for the 2019 tax year. (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>.)

<sup>4</sup> See <https://www.ftb.ca.gov/myftb/features.html>

the \$800 annual LLC tax until July 14, 2020. Appellant does not dispute that it paid the tax late, and there is no dispute that the late payment penalty was properly calculated and imposed. On appeal, appellant argues that FTB's system of sending PINs through the mail to access one's FTB account so payment can be made is "unreliable, archaic and negligent." Appellant asserts that the PIN could get lost in the mail or arrive while the recipient is out of town. Appellant also contends that the penalties needed clarification and would have been paid over the phone if the wait times were not over three hours. Appellant argues that a consistent and loyal business owner and taxpayers should not be penalized for an unreliable and precarious system.

Appellant has not shown how its access to its MyFTB account or FTB's mailing of its PIN is related to the delay in paying its tax or why such circumstances resulted in a payment delay of more than one year. FTB provides a January 31, 2020 notice sent to appellant that includes appellant's PIN number, which can be used to complete the registration process and access appellant's account for FTB's website. The notice indicates that appellant registered with the MyFTB website on January 27, 2020, four days before the notice with the PIN was sent to appellant. Therefore, the record does not indicate any delay in receiving the PIN. In addition, the PIN was not requested until after the payment due date had passed. Furthermore, appellant has not shown how receipt of the PIN is related to the payment of tax because MyFTB is not used or required to pay tax.<sup>5</sup>

To the extent appellant argues that the penalty should be abated because it has a consistent history of good filing, there is no authority to abate the penalty based on a good filing history. Accordingly, appellant has not shown reasonable cause for the late payment.

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<sup>5</sup> See <https://www.ftb.ca.gov/myftb/features.html>

HOLDINGS

1. Appellant has not established a basis to abate the per-partner late filing penalty.
2. Appellant has not established a basis to abate the late payment penalty.

DISPOSITION

FTB's action is sustained.

Signed by:  
  
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Josh Lambert  
Administrative Law Judge

Date Issued: 8/16/2024