

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 230813995
A6 GROUP LLC)
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OPINION

Representing the Parties:

For Appellant: Olivier Delerm, Managing Member
Natalie Wu, Representative

For Respondent: Tristen Thalhuber, Attorney

S. KIM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, A6 Group LLC (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$3,610.79¹ for the 2021 tax year.

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 late payment penalty.²

FACTUAL FINDINGS

1. On April 15, 2021, appellant remitted a limited liability company (LLC) tax payment of \$800. On June 15, 2021, appellant remitted an LLC fee payment of \$900. On September 9, 2021, appellant remitted an additional LLC fee payment of \$1,600. On June 15, 2022, appellant remitted a pass-through entity tax payment of \$48,780.

¹ Appellant’s claim for refund stated a refund amount of \$3,613.15. (See Factual Findings 5, *infra*.) However, FTB imposed a late payment penalty of \$3,186.54 and assessed interest of \$424.25, totaling \$3,610.79. Thus, the amount in dispute is \$3,610.79.

² Appellant also seeks a \$424.25 refund for interest paid. However, appellant did not state any grounds for relief of interest in its appeal letter or its claim for refund. Therefore, this Opinion does not address interest relief further.

2. On August 23, 2022, appellant timely filed within the automatic extension period a Limited Liability Company Return of Income (Form 568) for the 2021 tax year, reporting total income of \$759,508, an LLC fee of \$900, an LLC tax of \$800, and pass-through entity elective tax of \$48,978. Appellant claimed total payments of \$50,480, for a total amount due of \$198, which appellant remitted to FTB on September 12, 2022.
3. FTB processed appellant's 2021 tax return.³ FTB imposed a late payment penalty of \$3,186.54, plus interest, because appellant's pass-through entity elective tax of \$48,780 was not timely paid.
4. On March 16, 2023, appellant made a payment of \$3,495.99 to FTB. On April 14, 2023, appellant made payments of \$114.80 and \$2.36 to satisfy the balance due for 2021.
5. On April 15, 2023, appellant filed a claim for refund with FTB for \$3,613.15, asserting that appellant paid all the required LLC tax and fee payments for 2021, and requesting abatement of the late payment penalty and interest.
6. On July 14, 2023, FTB issued appellant a letter denying the claim for refund.
7. Appellant filed this timely appeal.

DISCUSSION

R&TC section 19001 provides that franchise and income tax shall be paid at the time and place fixed for filing the return determined without regard to any extension of time for filing the return. R&TC section 19904 provides that the pass-through entity elective tax for taxable years beginning on or after January 1, 2021, and before January 1, 2022, is due and payable on or before the due date of the original return without regard to any extension of time for filing the return. R&TC section 19132 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 of the tax. FTB shall impose a late payment penalty of 5 percent of the initial underpaid tax amount (or underpayment penalty) plus one-half of 1 percent of the outstanding liability for each subsequent month or fraction thereof for a maximum of 40 months (or monthly penalty). (R&TC, § 19132(a)(2).)

The late payment penalty will be abated if the 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)(A).) To establish reasonable cause for the late payment of tax, a taxpayer must

³ FTB discovered that appellant had not reported the additional \$1,600 LLC fee due and paid. Thus, FTB increased appellant's total tax and fee from \$50,678 to \$52,278, and total payments from \$50,480 to \$52,080.

demonstrate 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.) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have missed the deadline under the same circumstances. (*Ibid.*)

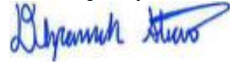
Here, appellant contends that it did not underpay taxes for the 2021 tax year. Appellant asserts that it mistakenly reported an LLC fee of \$900 instead of \$2,500. However, FTB did not impose the late payment penalty because of appellant’s underreporting of the additional \$1,600 LLC fee and payment. FTB imposed the late payment penalty because appellant paid the pass-through entity elective tax of \$48,780 on June 15, 2022, when the payment was due on March 15, 2022, the due date of the 2021 tax return. (See R&TC, §§ 19904, 19132.) Accordingly, appellant has not established reasonable cause to abate the late payment penalty.

HOLDING


Appellant has not established reasonable cause to abate the late payment penalty.


DISPOSITION

FTB’s action in denying the claim for refund is sustained.

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Steven Kim
Administrative Law Judge

We concur:

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Josh Aldrich
Administrative Law Judge

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Suzanne B. Brown
Administrative Law Judge

Date Issued: 8/9/2024