

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
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**VENDOME INVESTMENTS, LLC** )  
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**OPINION**

Representing the Parties:

For Appellant: Thomas Gumener, Representative

For Respondent: Blake Cunningham, Specialist

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Vendome Investments, LLC (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$1,360, plus applicable interest, for the 2019 tax year.<sup>1</sup>

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 failing to timely file a 2019 tax return or failing to timely pay its 2019 tax liability.
2. Whether appellant is entitled to interest abatement.

**FACTUAL FINDINGS**

1. Appellant is a Delaware limited liability company (LLC). In 2019, appellant registered with the California Secretary of State. Appellant is taxed as a partnership for California income tax purposes.
2. On September 30, 2019, appellant untimely paid the 2019 LLC annual tax of \$800.

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<sup>1</sup> On appeal, appellant does not specifically address or dispute FTB’s imposition of the LLC annual tax, or the collection cost recovery fee of \$332; therefore, they are not discussed further.

3. On August 8, 2022, appellant untimely filed a 2019 Limited Liability Company Return of Income on Form 568 (return). Appellant reported zero total income, zero LLC fee, LLC annual tax of \$800, total payments of \$800, and zero amount due. Appellant reported six members.
4. FTB processed the return and imposed a late filing penalty of \$1,296, a late payment penalty of \$64, and applicable interest.
5. Appellant paid the amount due and subsequently filed a claim for refund for the late payment penalty, late filing penalty, and interest. FTB denied the claim.
6. This appeal followed.

### DISCUSSION

Issue 1: Whether appellant has established reasonable cause for failing to timely file a 2019 tax return or failing to timely pay its 2019 tax liability.

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 shall file its return on or before the 15th day of the third month following the close of its taxable year. (R&TC, § 18633.5(a).) FTB postponed the deadline to July 15, 2020, for LLCs to file their 2019 tax returns.<sup>2</sup> R&TC section 19172(a) imposes a per-partner late filing penalty when a partnership (or an LLC classified as a partnership) fails to file a return by the date prescribed for filing the return. R&TC section 19132(a)(1)(D) also imposes a late payment penalty when a taxpayer fails to pay the amount required to be paid by R&TC section 17941 (imposing the LLC annual tax) by the due date.

Here, appellant does not dispute that the return was filed late, that it untimely paid the 2019 LLC annual tax, or that FTB properly calculated the per-partner late filing and late payment penalties. Instead, appellant asserts that the penalties should be abated due to reasonable cause; specifically, appellant asserts that its former CPA firm unexpectedly and suddenly closed, which significantly impacted appellant's ability to timely fulfill its tax obligations.

The late filing penalty and the late payment penalty will be abated if the taxpayer establishes reasonable cause for the respective failures. (R&TC, §§ 19172(a), 19132(a)(1).)

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<sup>2</sup> 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>. However, the deadline to pay the 2019 LLC annual tax was not postponed, as it was still due April 15, 2019, for calendar year taxpayers. (See R&TC, § 17941(c).)

To establish reasonable cause for the late payment of tax, a taxpayer must show that the failure to timely file or pay occurred despite the exercise of ordinary business care and prudence. (*Appeal of Auburn Old Town Gallery, LLC*, 2019-OTA-319P; *Appeal of Scanlon*, 2018-OTA-075P.) Each taxpayer has a non-delegable obligation to file a tax return by the due date. (*Appeal of Summit Hosting LLC*, 2021-OTA-216P.) A taxpayer's reliance on a tax advisor must involve reliance on substantive tax advice and not on simply clerical duties. (*Ibid.*)

Here, appellant had a non-delegable obligation to timely file the return and pay the 2019 LLC annual tax. Appellant has not established what advice, if any, it received from the CPA firm. Appellant has also not established what efforts, if any, it undertook to timely file and pay. Instead, appellant references its claim for refund, which claims that the CPA firm failed to file the return, and that once appellant discovered the oversight, it hired a new accountant to file the return. However, the failure to file a return or pay the tax due that is caused by an oversight (whether the taxpayer's own or its accountant) is not reasonable cause. (*Appeal of Auburn Old Town Gallery, LLC, supra*; *Appeal of Friedman*, 2018-OTA-077P.) Appellant does not otherwise explain why it filed the return over two years late. Therefore, appellant has not shown reasonable cause for the failure to timely file the return and pay the 2019 LLC annual tax.

Issue 2: Whether appellant is entitled to interest abatement.

Interest must be assessed from the date a tax payment is due through the date that it is paid. (R&TC, § 19101(a).) Interest is not a penalty but is compensation for the taxpayer's use of money after it should have been paid to the state. (*Appeal of Moy*, 2019-OTA-057P.) Imposition of interest is mandatory, and it can only be abated in certain limited situations when authorized by law. (*Ibid.*) There is no reasonable cause exception to the imposition of interest. (*Ibid.*) Generally, to obtain relief from interest, a taxpayer must qualify under R&TC section 19104 or 21012.<sup>3</sup> 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 FTB employee. Pursuant to R&TC section 21012, a taxpayer may be relieved of interest based on reasonable reliance on written advice requested from FTB.

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<sup>3</sup> Under R&TC section 19112, FTB may waive interest for any period for which it determines that an individual or fiduciary is unable to pay interest due to extreme financial hardship. The Office of Tax Appeals does not have authority to review FTB's denial of a request to waive interest under R&TC section 19112. (*Appeal of Moy, supra.*)


Appellant does not allege that either statutory provision for interest abatement applies to the facts of this appeal, and the Office of Tax Appeals concludes, based on the evidence in the record, that no statutory provision for abatement applies here. Therefore, there is no basis to abate interest.

HOLDINGS

1. Appellant has not established reasonable cause for failing to timely file a 2019 tax return or failing to timely pay its 2019 tax liability.
2. Appellant is not entitled to interest abatement.

DISPOSITION

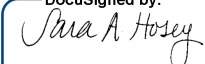
FTB’s action denying appellant’s claim for refund is sustained.

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Asaf Kletter  
 Administrative Law Judge

We concur:

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Sara A. Hosey  
 Administrative Law Judge

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Kenneth Gast  
 Administrative Law Judge

Date Issued: 8/12/2024