

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 230713740  
TAPATIO FOODS LLC )  
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**OPINION**

Representing the Parties:

For Appellant: Steven J. Mandel, CPA

For Respondent: Camille Dixon, Attorney

For Office of Tax Appeals: Michelle Huh, Attorney

L. KATAGIHARA, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Tapatio Foods LLC (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$103,854.15<sup>1</sup> and applicable interest for the 2021 tax year.

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 to abate the late payment penalty.
2. Whether appellant has established a basis upon which interest can be abated.

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<sup>1</sup> Appellant’s request for appeal specifies a penalty amount of \$92,314.80. However, the correct amount of the penalty in dispute (i.e., the late payment penalty, which is comprised of the underpayment penalty and monthly penalty) is \$103,854.15.

FACTUAL FINDINGS

1. On March 12, 2022, appellant, a limited liability company (LLC) taxed as a partnership, attempted to make an electronic pass-through entity (PTE) elective tax payment of \$1,175,000, but the payment was not successfully remitted to FTB.<sup>2</sup> On March 26, 2021, appellant made payments of \$11,790 and \$800 for the 2021 LLC fee and annual LLC tax, respectively.
2. Appellant timely filed a 2021 Limited Liability Company Return of Income (return), for the fiscal year beginning January 1, 2021, and ending December 31, 2021. Appellant's return reported total tax of \$1,166,525,<sup>3</sup> total payments of \$1,187,590, and an overpayment of \$21,065. Appellant claimed the overpayment as a refund.
3. FTB's records reflected appellant's payments for the 2021 tax year totaled \$12,590, rather than the reported amount of \$1,187,590. Consequently, FTB processed appellant's return by adjusting the total payment amount from \$1,187,590, to \$12,590, and imposed a late payment penalty.<sup>4</sup>
4. On October 27, 2022, appellant remitted a payment of \$1,175,000 to FTB, but did not pay the late payment penalty or interest.
5. Shortly thereafter, appellant filed a claim for refund requesting abatement of the late payment penalty and interest.
6. On March 1, 2023, appellant paid the balance due on its 2021 account (i.e., the late payment penalty and interest).
7. Thereafter, FTB denied appellant's claim for refund.
8. This timely appeal followed.

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<sup>2</sup> Appellant also unsuccessfully attempted to make a PTE elective tax payment of \$587,500 on August 25, 2022, to FTB. However, neither party addresses that payment on appeal. Consequently, the Office of Tax Appeals (OTA) does not consider that payment to be in dispute.

<sup>3</sup> The total tax is comprised of an LLC fee of \$11,790, an annual LLC tax of \$800, and a PTE elective tax of \$1,153,935.

<sup>4</sup> The late payment penalty was imposed as a result of appellant's nonpayment of the PTE elective tax.

## DISCUSSION

### Issue 1: Whether appellant has established reasonable cause to abate the late payment penalty.

Every LLC that is classified as a partnership for California tax purposes is required to file a return on or before the 15th day of the third month following the close of its tax year. (R&TC, § 18633.5(a).) For tax years beginning on or after January 1, 2021, and before January 1, 2022, the PTE elective tax is due and payable on or before the due date of the original return. (R&TC, § 19904(a)(1).)

R&TC section 19132(a)(1)(A) imposes a late payment penalty when a taxpayer fails to pay the amount shown as tax on the return by the date prescribed for the payment. 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)(1).) 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 Summit Hosting LLC*, 2021-OTA-216P.) Lack of notice from FTB regarding a failed payment does not negate a taxpayer's duty of prudence and due care to confirm that its payment was successfully remitted. (*Appeal of Scanlon*, 2018-OTA-075P.)

Here, it is undisputed that appellant did not timely pay its PTE elective tax for the 2021 tax year. Nor does appellant contest the calculation or imposition of the late payment penalty. Instead, appellant argues that the late payment penalty should be abated based on reasonable cause. Appellant contends it exercised ordinary business care and prudence because it electronically scheduled its PTE elective tax payment of \$1,175,000 to be timely paid (and had sufficient funds to cover the payment in March 2022), but unbeknownst to appellant, the payment was disallowed due to restrictions imposed by appellant's bank.<sup>5</sup> Appellant states that once it became aware the payment was not made, appellant immediately remitted the effectuated payment. Appellant also explains that its managing member is 93-years old, has several business bank accounts, and was personally unaware of the bank's restrictions. Appellant claims that the age of its managing member was a contributing factor to the amount of time that lapsed between

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<sup>5</sup> Appellant states that its bank is willing to provide statements indicating that it did not inform appellant of the restrictions, and that appellant would not have known the scheduled payment would be rejected due to such restrictions. However, based on the legal analysis provided below, the submission of such statements, if provided, would not have had any bearing on the outcome of this case.

appellant discovering the attempted payment was rejected and remitting the effectuated payment.

However, a reasonably prudent taxpayer exercising due care and diligence is expected to monitor its bank account and quickly ascertain whether a scheduled electronic payment from its account to FTB was in fact paid. (*Appeal of Scanlon, supra.*) Therefore, even if appellant's bank prevented the attempted payment from being effectuated, appellant, as a reasonably prudent taxpayer exercising due care and diligence, should have monitored its account to confirm the payment was properly remitted.

With respect to appellant's assertion that the age of appellant's managing member contributed to the delay in making the effectuated payment, the Office of Tax Appeals (OTA) first notes that there was about a seven-month span between the attempted payment (that would have been timely, if successful) and the effectuated payment. Appellant has not explained with any specificity how the managing member's age caused a delay in payment during that period. Nor has appellant provided any supporting evidence to support such an assertion. Second, appellant's contention is contradicted by its own assertion that it immediately paid the PTE elective tax upon learning that the attempted payment had not been remitted.<sup>6</sup>

Appellant also contends that it is unfair that FTB did not notify appellant of the failed payment. However, lack of notice from FTB of the failed payment does not negate appellant's duty of prudence and due care to confirm that its payment was successfully remitted. (See *Appeal of Scanlon, supra.*) Accordingly, appellant has not established reasonable cause to abate the late payment penalty.

Issue 2: Whether appellant has established a basis upon which interest can be abated.

Imposing interest on a tax deficiency is mandatory. (R&TC, § 19101(a).) Interest is also charged on penalties. (R&TC, § 19101(c)(2).) Interest can only be abated in certain limited situations when authorized by law. (*Appeal of Rougeau, 2021-OTA-335P.*) Generally, to obtain

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<sup>6</sup> There is no indication in the record of the date appellant became aware the attempted payment was unsuccessful.

relief from interest, a taxpayer must qualify under R&TC section 19104, 19112, or 21012.<sup>7</sup>  
(*Ibid.*) There is no reasonable cause exception to the imposition of interest. (*Ibid.*)

Appellant does not argue that R&TC section 19104, 19112, or 21012 applies here. Instead, appellant makes the same reasonable cause arguments it made in support of its request for abatement of the late payment penalty. However, reasonable cause is not a valid basis for relief of interest. Thus, appellant has not established that it is entitled to interest abatement.

HOLDINGS


1. Appellant has not established reasonable cause to abate the late payment penalty.
2. Appellant has not established a basis upon which interest can be abated.

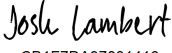
DISPOSITION

FTB’s action is sustained.

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 Lauren Katagihara  
 Administrative Law Judge

We concur:

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 Administrative Law Judge

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 Josh Lambert  
 Administrative Law Judge

Date Issued: 7/23/2024

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<sup>7</sup> Under 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. Under R&TC section 19112, FTB may waive interest for any period for which FTB determines that an individual has extreme financial hardship, but OTA does not have jurisdiction to review FTB’s exercise of such discretion. (See *Appeal of Moy*, 2019-OTA-057P.) Under R&TC section 21012, an individual may be relieved from interest if that person reasonably relied on FTB’s written advice in response to a written request.