

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
**CHALLENGE TRANSPORTATION LLC** ) OTA Case No. 220811003  
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**OPINION**

Representing the Parties:

For Appellant: Francine Araiza, President

For Respondent: Christopher M. Cook, Attorney

For Office of Tax Appeals: Nguyen Dang, Attorney

K. GAST, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Challenge Transportation LLC (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$657.01 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.

**ISSUE**<sup>2</sup>

Whether appellant’s 2019 California LLC return (Return) was timely.

**FACTUAL FINDINGS**

1. Appellant is an LLC classified as a partnership for tax purposes, with a tax year ending December 31, 2019.
2. Respondent’s records indicate that it received the Return on July 23, 2021, after the filing deadline had passed.

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<sup>1</sup> This amount consists of a late-payment penalty of \$148, a per-partner late-filing penalty of \$432, and interest of \$77.01.

<sup>2</sup> Although appellant’s appeal letter included interest and the late-payment penalty in the disputed amount, appellant raises no arguments and presents no evidence pertaining to these items. Therefore, they will not be addressed further, and only the per-partner late-filing penalty is at issue here.

3. Respondent imposed a per-partner late-filing penalty under R&TC section 19172.
4. Appellant paid the balance due and filed a refund claim asserting that it had electronically filed the Return on May 27, 2020, prior to the filing deadline.
5. In support of its claim, appellant provided to respondent an Acknowledgement Report (Report) showing that the Return was accepted by respondent on May 27, 2020.
6. The Report also shows a submission ID (i.e., a unique string of characters generated to identify the filing of an electronic return) containing an electronic filer identification number<sup>3</sup> belonging to Taxware Systems and reflecting a date of July 23, 2021.
7. Respondent contacted Taxware Systems, which provided an archived copy of respondent's acknowledgement response to the electronic submission associated with the submission ID stated on the Report. The metadata tags contained in this response indicate that the electronic submission was created on July 23, 2021, and accepted by respondent on this same date.
8. Taxware Systems also stated it was unable to confirm whether, using a different submission ID, appellant had filed the Return on May 27, 2020, as data from that period was no longer available in its archives.
9. Respondent determined the Report was not credible evidence that the Return had been timely filed and denied the claim.
10. This timely appeal followed.
11. On appeal, respondent concedes it miscalculated the late-payment penalty and that appellant is entitled to a refund of \$60.

### DISCUSSION

The sole issue for decision is the timeliness of the Return, which appellant contends was timely filed electronically on May 27, 2020. Appellant bears the burden of proof in this matter. (*Appeal of Estate of Gillespie*, 2018-OTA-052P [taxpayer bears the burden of proving entitlement to any refund]; see also Cal. Code Regs., tit. 18, § 30219(a) [except as otherwise provided by law, the burden of proof is upon appellant as to all issues of fact].)

Generally, a document is considered filed with the government when it is actually delivered and received by the proper agency or official. (*U.S. v. Lombardo* (1916) 241 U.S. 73,

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<sup>3</sup> Electronic filer identification numbers are used to identify government authorized e-filing service providers.

76-77.) In the case of a document which is electronically filed with respondent, the acceptance of the document by respondent's electronic filing system is analogous to physical delivery of the document to respondent in paper form. Thus, the date the document was acknowledged as accepted by respondent may also be considered the date the document was electronically filed.

There is a notable exception to this general rule, which pertains to documents filed with an authorized electronic return transmitter. Such documents are considered filed on the date that the electronic return transmitter receives the electronically filed document on its host system, as evidenced by an electronic postmark. (R&TC, § 21027(b) [incorporating Treas. Reg. § 301.7502-1(d)].)

Here, the extended due date for filing the Return was October 15, 2020. (R&TC, §§ 18633.5(a), 18567(a)(2)(B); Cal. Code Regs., tit. 18, § 18567(a).) To prove the Return was timely filed, appellant must show that the Return was either received by respondent or an authorized return transmitter on or before this date. Appellant has failed to make such a showing.

Appellant did not provide an electronic postmark to support its alleged May 27, 2020 filing. Moreover, while the Report indicates that the Return was accepted on May 27, 2020, this date is uncorroborated and, as pointed out by respondent, conflicts with the July 23, 2021 date reflected in the submission ID; that is, respondent could not have accepted an electronic submission associated with a submission ID that had not yet been created. In contrast, the July 23, 2021 acceptance date provided by Taxware Systems is consistent with the evidence showing that the submission ID and the associated electronic submission were generated on July 23, 2021, and respondent's records indicating that the Return was received on this date. The evidence therefore overwhelmingly supports that the Return was filed on July 23, 2021. Accordingly, appellant has not shown that the Return was timely filed.

HOLDING

The Return was untimely.

DISPOSITION

Respondent's action is modified consistent with its concession of \$60 on the late-payment penalty but is otherwise sustained.

DocuSigned by:  
*Kenny Gast*  
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Kenneth Gast  
Administrative Law Judge

We concur:

Signed by:  
*Josh Lambert*  
CB4F7DA37831418...  
Josh Lambert  
Administrative Law Judge

Signed by:  
*Veronica I. Long*  
32D46B0C49C949F  
Veronica I. Long  
Administrative Law Judge

Date Issued: 8/21/2024