

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 231114740
DIRECT BIOLOGICS LLC)
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OPINION

Representing the Parties:

For Appellant: Jeff Mims, Chief Financial Officer

For Respondent: Blake Cunningham, Specialist

For Office of Tax Appeals: Thomas Lo Grossman, Attorney

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Direct Biologics LLC (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$56,304 for the 2021 tax year.

Appellant waived the right to an oral hearing; therefore, the matter is being decided by the Office of Tax Appeals (OTA) based on the written record.

ISSUE

Whether appellant has established reasonable cause to abate the per-partner late filing penalty.

FACTUAL FINDINGS

1. Appellant is an LLC that is classified as a partnership for California income tax purposes, and, for the 2021 tax year, had 391 members.
2. Appellant untimely filed its California partnership tax return for the 2021 tax year on October 31, 2022.
3. As relevant here, FTB subsequently imposed the per-partner penalty for filing late.

4. Appellant thereafter filed an amended return¹ and paid the per-partner penalty imposed by FTB.
5. Appellant subsequently filed a refund claim, which requested abatement of the per-partner penalty based on reasonable cause grounds.
6. FTB then denied appellant's claim for refund.
7. Appellant's timely appeal followed.

DISCUSSION

R&TC section 19172(a) imposes a per-partner late filing penalty when an entity classified as a partnership fails to file a return at the time prescribed for the filing, unless it is shown that the failure is due to reasonable cause. When FTB imposes a penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.)

For penalty abatement purposes, 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, a taxpayer must show that the failure to meet its tax filing obligation occurred despite the exercise of ordinary business care and prudence. (*Ibid.*) The burden of proof is on the taxpayer to show that reasonable cause exists to support an abatement of the penalty. (*Appeal of Xie, supra.*) To overcome the presumption of correctness attached to the penalty, appellant must provide credible and competent evidence supporting a claim of reasonable cause; otherwise, the penalty cannot be abated. (*Ibid.*) A taxpayer's reliance on an agent, such as an accountant or a tax attorney, to file the return by the due date is not reasonable cause. (*Appeal of Auburn Old Town Gallery, LLC, supra*, citing *U.S. v. Boyle* (1985) 469 U.S. 241, 252.)

In the instant case, appellant does not dispute the imposition or computation of the per-partner late filing penalty, but argues that it relied in good faith on its accountants to timely file and objects to a tax penalty which it asserts is disproportionately punitive compared to the tax owed. However, reliance on an agent for the administrative task of filing a return on time does not constitute reasonable cause. (*Appeal of Auburn Old Town Gallery, LLC, supra; U.S. v. Boyle, supra*, 469 U.S. at p. 252.) Moreover, the per-partner late filing penalty is computed based on the number of partners and the penalty has no relationship to the LLC tax or fee. (See

¹ Appellant's amended return reduced its LLC fee but this did not impact the per-partner penalty.

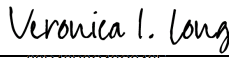
R&TC, § 19172(b).) Appellant claims the penalty is an undue burden; however, no statute or provision authorizes OTA to make discretionary adjustments to the amount of the penalty. (See *Appeal of Robinson*, 2018-OTA-059P.) Accordingly, appellant has not demonstrated reasonable cause to abate the penalty.

HOLDING

Appellant has not established reasonable cause to abate the per-partner late filing penalty.


DISPOSITION

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


Signed by:


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Veronica I. Long
Administrative Law Judge

We concur:

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Asaf Kletter
Administrative Law Judge

DocuSigned by:


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Kenneth Gast
Administrative Law Judge

Date Issued: 8/22/2024