

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 230713759  
**BEERBABY VENTURES LLC** )  
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**OPINION**

Representing the Parties:

For Appellant: William R. Soper, CPA

For Respondent: Vivian Ho, Attorney

For Office of Tax Appeals: Thomas Lo Grossman, Attorney

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, BeerBaby Ventures LLC (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$696 consisting of a \$648 late-filing penalty and a \$48 late-payment penalty<sup>1</sup> for the 2019 taxable year.

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

**ISSUE**

Has appellant established reasonable cause to abate the per-partner late-filing penalty imposed under R&TC section 19172?

**FACTUAL FINDINGS**

1. Appellant is a limited liability company (LLC) classified as a partnership for income tax purposes. On August 24, 2021, appellant untimely filed its initial Limited Liability Company Return of Income (Form 568) for taxable year 2019. The return reported that

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<sup>1</sup> The late-payment penalty is not at issue in this appeal. As such, this Opinion does not discuss the penalty.

appellant started business in California on October 9, 2019, and had three members.

Appellant paid the \$800 annual tax on March 2, 2020.

2. FTB imposed a late-filing penalty of \$648 and a late-payment penalty of \$48.
3. Appellant paid \$723.62 on September 14, 2022, satisfying the balance due including interest.
4. Appellant filed a claim for refund requesting abatement of the penalties.
5. FTB issued appellant a Notice of Action denying appellant's claim for refund.
6. Appellant timely appealed.

### DISCUSSION

R&TC section 18633.5(a) provides that every LLC 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 is required to file a return on or before the 15th day of the third month following the close of its taxable year. For taxable year 2019, however, appellant's 2019 return's original filing due date was postponed to July 15, 2020.<sup>2</sup> In addition, California provides an automatic six-month extension to file a return if the return is filed within six months of the original due date, which is September 15, 2020. (Cal. Code Regs., tit. 18, § 18567(a); see also *Appeal of Bannon*, 2023.OTA-096P.)

R&TC section 19172 imposes a per-partner late-filing penalty when a partnership or an LLC classified as a partnership fails to file a return at the time prescribed (determined with regard to any extension of time for filing) unless it is shown that the failure was due to reasonable cause. The amount of the per-partner late-filing penalty under R&TC section 19172 is computed by multiplying \$18 by the number of partners (or LLC members) and by the number of months, or fraction thereof, that the return is late (not to exceed 12 months). (R&TC, § 19172(a)(2), (b).)

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

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<sup>2</sup> In response to COVID-19, FTB postponed the original filing due date for 2019 returns to July 15, 2020. (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>.)

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*, 2018-OTA-076P.) When FTB imposes a penalty, the law presumes that it was imposed correctly. (*Ibid.*) 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.*) It is well settled that a taxpayer's reliance on an agent, such as an accountant, to file a return by the due date is not reasonable cause because a taxpayer has a personal, non-delegable obligation to file a return by the due date. (*Appeal of Quality Tax & Financial Services, Inc.*, 2018-OTA-130P.)

Here, appellant does not contest that the per-partner late-filing penalty was properly imposed and computed. However, appellant asserts that the per-partner late filing penalty should be abated because its failure to timely file a return was due to reasonable cause. All of appellant's arguments in its refund claim letter and on appeal amount to arguments that appellant's CPA was indisposed due to COVID disruptions, medical issues, and wildfire(s). Appellant argues that it failed to timely file its return due to these events and because it could not access its tax documents until August 2021 when appellant's CPA was no longer required to work remotely.


Appellant's arguments fail because appellant produces no supporting evidence substantiating its CPA's difficulties and hardships during the relevant period. Moreover, even if appellant had substantiated that appellant's CPA was indisposed as stated, appellant provides no evidence showing that it attempted to find a substitute tax preparer who could meet the July 15, 2020 filing deadline as a prudent businessperson would have done. Finally, as appellant's obligation to file a return by the due date is personal and nondelegable, even if appellant's CPA was severely hampered, this would not excuse appellant's failure to timely file its 2019 return by the due date, as reliance on an agent does not constitute reasonable cause. (See *Appeal of Quality Tax & Financial Services, Inc.*, *supra.*)

HOLDING


Appellant has not established reasonable cause to abate the per-partner late-filing penalty imposed under R&TC section 19172.


DISPOSITION

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

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Teresa A. Stanley  
Administrative Law Judge

We concur:

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Andrew Wong  
Administrative Law Judge

DocuSigned by:  
  
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John O. Johnson  
Administrative Law Judge

Date Issued: 11/12/2024