

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No. 230914305
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DAVIS VENTURES, LTD. I)	
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OPINION

Representing the Parties:

For Appellant:	Robert C. Nii, Representative
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For Respondent:	Ariana Macedo, Graduate Legal Assistant
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For Office of Tax Appeals:	Thomas Lo Grossman, Attorney
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A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Davis Ventures, Ltd. I (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant's claim for refund of \$3,456 for the 2017 tax year.¹

Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUE

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

FACTUAL FINDINGS

1. Appellant, a California limited partnership with 16 partners, submitted its 2017 Partnership Return of Income (Return) for electronic filing. On March 28, 2018, and March 29, 2018, FTB rejected the Return.
2. Appellant untimely paper-filed its Return on February 3, 2021.

¹ Appellant only requested a refund of the per-partner late filing penalty.

3. On April 14, 2021, FTB sent appellant a notice of balance due imposing the per-partner late filing penalty on appellant.
4. On May 10, 2021, FTB received a letter from appellant requesting abatement of the penalty for reasonable cause.
5. FTB thereafter issued collections notices to appellant.
6. On October 29, 2021, appellant paid the per-partner late filing penalty in full.
7. On November 8, 2021, FTB received appellant's claim for refund of the per-partner late filing penalty, which asserted reasonable cause for its failure to timely file the Return.
8. On June 20, 2023, FTB denied appellant's claim for refund.
9. Appellant's timely appeal followed. On appeal, appellant provides a 2017 e-file Activity Report (e-file report).

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, 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.)

Appellant asserts that it timely filed the Return. However, appellant has provided no evidence that a Return was properly filed. Appellant provides an e-file report which shows only that FTB rejected the Return on March 28, 2018, and March 29, 2018, and does not show that it accepted the Return. Appellant asserts that a Partnership Client Activity Report (activity report) shows that it paper filed additional copies of the Return with FTB on April 2018, October 2018, and January 2021. However, the activity report shows only that a copy of the Return was printed; it does not show that appellant mailed a paper copy of the Return to FTB. A taxpayer attempting to prove that a paper return was timely mailed would have to show evidence, such as a registered or certified mail receipt, that the return was timely mailed, and thus timely filed with FTB. (*Appeal of Fisher*, 2022-OTA-337P.) Appellant provides no evidence that the Return was mailed. Moreover, FTB has no record of receiving a Return prior to February 3, 2021. Therefore, the record shows appellant did not file a timely Return and the per-partner late filing penalty was properly imposed.

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.*)

Appellant argues that it has reasonable cause because it did not foresee FTB's rejection of its electronic Return due to an issue with a tax form. However, the exercise of ordinary business care and prudence required appellants to personally verify the return had been successfully transmitted, and when it had not been, to take appropriate corrective action. (*Appeal of Fisher, supra.*) Appellant does not explain whether it took any corrective action to e-file the Return and the e-file report shows the same rejection reason on March 28, 2018, and March 29, 2018. As discussed previously, appellant asserts that it timely paper mailed a copy of the Return, but fails to provide any evidence that the Return was filed. Appellant provides no other evidence of its efforts to timely file the Return. Accordingly, appellant has not shown reasonable cause for the failure to timely file its Return.

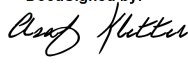
Appellant also requests first-time penalty abatement, as the IRS provides. However, California law does not provide for one-time abatement of a timeliness penalty for the 2017 tax year on appeal. (See R&TC, § 19132.5(a), (f) [effective for taxable years beginning on or after January 1, 2022].)

HOLDING

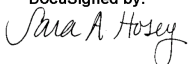
Appellant has not established reasonable cause to abate the per-partner late filing penalty.

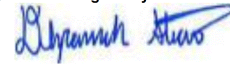
DISPOSITION

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

DocuSigned by:

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Asaf Kletter
Administrative Law Judge

We concur:

DocuSigned by:

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Sara A. Hosey
Administrative Law Judge

DocuSigned by:

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For
Lauren Katagihara
Administrative Law Judge

Date Issued: 7/29/2024