

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
APPLIED BIOMEDICAL RESEARCH LLC) OTA Case No. 240215317
)
)
)
)

OPINION

Representing the Parties:

For Appellant: Patricia Harik, CPA
For Respondent: Blake Cunningham, Specialist

K. WILSON, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Applied Biomedical Research LLC (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$1,018.01¹ for the 2021 tax year.

Appellant waived the right to an oral hearing; therefore, the matter was submitted to the Office of Tax Appeals (OTA) on the written record pursuant to California Code of Regulations, title 18, section 30209(a).

ISSUES

1. Whether appellant has established reasonable cause for the abatement of the per-member late filing penalty.
2. Whether appellant has established reasonable cause for the abatement of the late payment penalty.
3. Whether appellant has established a basis to abate interest.

¹ FTB’s claim denial notice indicated that it was disallowing appellant’s claim for refund “for the amount of \$968.00, plus any applicable interest.” Similarly, in the appeal form, appellant listed the amount at issue in the appeal as \$968 (total of late filing and late payment penalties). Since appellant believes there is a reasonable cause for the abatement of interest (\$50.01) and appellant filed a claim for refund with FTB for \$1,018.01, the Opinion will consider the appeal to be a claim for refund of \$1,018.01.

FACTUAL FINDINGS

1. Appellant, a limited liability company (LLC) classified as a partnership for tax purposes, paid \$800 towards its 2021 LLC tax on July 29, 2022.
2. According to appellant's Limited Liability Company Return of Income filed on August 30, 2023, appellant had four members, including G. Willis.²
3. FTB imposed a per-member late filing penalty of \$864 and a late payment penalty of \$104.³
4. Appellant paid \$1,018.01 on December 20, 2023, which satisfied the balance due for the 2021 tax year.⁴
5. Appellant filed a claim for refund for \$1,018.01 on January 2, 2024, requesting abatement of the late payment penalty, the per-member late filing penalty, and interest.
6. FTB denied appellant's claim for refund on January 23, 2024.
7. Appellant timely filed this appeal on February 6, 2024.

DISCUSSIONIssue 1: Whether appellant has established reasonable cause for the abatement of the per-member late filing penalty.

R&TC section 18633.5(a) provides that every LLC that is 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 shall file its return on or before the fifteenth day of the third month following the close of its taxable year. Alternatively, the LLC may file its return on or before the automatic extended due date, which is six months after the original filing due date. (R&TC, § 18567; Cal. Code Regs., tit. 18, § 18567.) However, if the return is not filed within six months of the original due date, no extension is allowed. (Cal. Code Regs., tit. 18, § 18567(a).)

R&TC section 19172 imposes a late-filing penalty when a partnership (or an LLC treated as a partnership) fails to file a return at the time prescribed unless it is shown that the failure was due to reasonable cause. The late-filing penalty under R&TC section 19172 is computed at

² Appellant included G. Willis as a member on its 2021 tax return despite his passing on August 3, 2020.

³ The per-member late filing penalty of \$864 was calculated at the rate of \$18 for each month the return is late up to a maximum of 12 months by the number of persons who were members of the LLC ($\$18 \times 12 \times 4 = \864). The late payment penalty of \$104 was calculated based on two components: underpayment component of \$40 ($\$800 \times .05$) and monthly component of \$64 ($\$800 \times .005 \times 16$).

⁴ Appellant's payment of \$1,018.01 comprises the late filing and late payment penalties totaling \$968, plus interest of \$50.01.

\$18 multiplied by the number of partners (or LLC members) for each month, or fraction thereof, that the return is late, up to a maximum of 12 months. (R&TC, § 19172(b).) Appellant had four members during the 2021 tax year, and filed its return on August 30, 2023, over one year past the original due date of March 15, 2022. Therefore, FTB properly imposed and computed the per-member late filing penalty.

The late filing penalty will be abated if it is established that the late filing was due to reasonable cause. (R&TC, § 19172(a).) 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.*)

Here, appellant contends that there is reasonable cause to abate the per-member late filing penalty because appellant's general partner and partnership representative, G. Willis, passed away on August 3, 2020, and was responsible for filing the LLC's tax returns. Taxpayers have an obligation to file timely returns with the best available information, and to then subsequently file an amended return, if necessary. (*Appeal of Xie*, 2018-OTA-076P.) Difficulty in obtaining information does not constitute reasonable cause for the late filing of a return. (*Ibid.*) Appellant reported on its 2021 tax return that it had four members, including G. Willis. While it is unfortunate that G. Willis passed away, appellant has not provided any explanation as to why the remaining members could not file the return timely since the filing date for the return was March 15, 2022, and G. Willis passed away in August of 2020.

Appellant cites the Instructions for FTB Form 2924, section B, Reasonable Cause, which provide that "California does not conform to federal relief from penalties based on good filing history or First-Time Abatement. However, we may abate a penalty if you can provide IRS documentation, which clearly states that the IRS abated the same penalty for reasonable cause."⁵ Appellant claims that the IRS abated the same penalties for reasonable cause and requests that FTB also abate the penalties. For the tax year at issue, FTB did not have a similar program to the IRS for penalty abatement. Appellant did not provide documentation supporting its claim that the IRS abated the same penalties as FTB assessed. FTB provided a transcript from the IRS for the tax year at issue which shows the penalty assessed as a failure to provide

⁵ While the IRS has an administrative program called "First Time Abate," under which it will abate timeliness penalties if a taxpayer has timely filed returns and paid tax for the past three years, neither the California Legislature nor FTB had adopted a comparable penalty abatement program for taxpayers other than individual taxpayers. Additionally, FTB's first time abate program is only applicable to tax years beginning on or after January 1, 2022. (See R&TC, § 19132.5(a), (f).)

information penalty, which the IRS subsequently reversed once appellant filed its tax return. The penalty assessed by FTB is not the same penalty assessed by the IRS. Therefore, appellant has failed to show reasonable cause for the abatement of the per-member late filing penalty.

Issue 2: Whether appellant has established reasonable cause for the abatement of the late payment penalty.

An LLC doing business in California must pay an annual \$800 LLC tax for the privilege of doing business in this state. (R&TC, § 17941(a).) The annual minimum tax must be paid for each taxable year, or part thereof, until a certificate of cancellation of the LLC is filed with the California Secretary of State. (R&TC, § 17941(b)(1).) The annual minimum tax is due “on or before the 15th day of the fourth month of the taxable year.” (R&TC, § 17941(c).) There is no “reasonable cause” exception to the imposition of the annual minimum tax. R&TC section 19132(a)(1)(A) imposes a late payment penalty when a taxpayer fails to pay the amount shown as due on the return by the date prescribed for the payment of tax (without regard to extensions of time for filing). The late payment penalty is computed as five percent of the total tax unpaid plus one-half percent for every month the payment of tax was late, not to exceed 40 months. (R&TC § 19132.) Appellant paid the LLC tax on July 29, 2022, which FTB calculated as 16 months past the payment due date of April 15, 2021. FTB properly imposed the late payment penalty under R&TC section 19132, because appellant untimely paid its annual tax of \$800.

The penalty is presumed correct unless the taxpayer can demonstrate that the late payments resulted from reasonable cause and not willful neglect. (R&TC, § 19132(a)(1); *Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.) To establish reasonable cause the taxpayer must demonstrate that the failure to timely pay the proper amount of the tax occurred despite the exercise of ordinary business care and prudence. (*Appeal of Triple Crown Baseball LLC, supra.*) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Moren*, 2019-OTA-176P.) Unsupported assertions are not sufficient to satisfy a taxpayer’s burden of proof. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.)

Appellant cites the same argument as above as reasonable cause to abate the late payment penalty. As previously discussed, appellant’s other members could have timely paid the LLC tax. Again, the IRS’s abatement of a failure to provide information penalty is not the

same penalty assessed by FTB. Therefore, appellant has not established reasonable cause to abate the late payment penalty.

Issue 3: Whether appellant has established a basis to abate interest.

Interest must be assessed from the date a tax payment is due through the date that it is paid. (R&TC, § 19101(a).) Imposing interest is mandatory, and FTB cannot abate interest except where authorized by law. (*Appeal of Jones*, 2021-OTA-144P) Interest is not a penalty, it is compensation for the use of money. (*Ibid.*) To obtain relief from interest, a taxpayer must qualify under R&TC sections 19104, 19112 or 21012. (*Ibid.*) Appellant has not alleged, and no evidence in the record indicates that any of these statutory provisions apply.⁶ Therefore, appellant has not established a basis for interest abatement.


⁶ Pursuant to 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 employee of FTB. Here, appellant does not assert any such errors or delays occurred. OTA also notes that relief pursuant to R&TC section 21012 is not relevant here because FTB did not provide appellant with any written advice. Also, OTA has no authority to review interest abatement under R&TC section 19112. (See *Appeal of Moy*, 2019-OTA-057P.)

HOLDINGS


1. Appellant has not established reasonable cause for the abatement of the per- member late filing penalty.
2. Appellant has not established reasonable cause for the abatement of the late payment penalty.
3. Appellant has not established a basis to abate interest.


DISPOSITION

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

Signed by:

 4E8E740EDB084CD...
 Kim Wilson
 Hearing Officer

We concur:

Signed by:

 32D48B0C49C949F...
 Veronica I. Long
 Administrative Law Judge

Signed by:

 CB4E7DA37831416...
 Josh Lambert
 Administrative Law Judge

Date Issued: 1/30/2025