

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
HOME SLICE ENTERPRISES, INC.) OTA Case No. 240115145
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OPINION

Representing the Parties:

For Appellant: R. Ordubegian, President

For Respondent: Alisa L. Pinarbasi, Attorney

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Home Slice Enterprises, Inc. (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$1,411.98 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).

ISSUE

Whether appellant is entitled to a refund for the 2021 tax year.

FACTUAL FINDINGS

1. On February 24, 2023, appellant filed its 2021 Corporation Franchise or Income Tax Return (Form 100) reporting a net loss of income for the year. The Form 100 reported tax of \$800 (the minimum franchise tax), \$800 of payments, and no tax due.
2. FTB issued appellant an Annual Notice reflecting that it had not received appellant’s reported \$800 payment, and imposed a \$200 late-filing penalty and a \$21.96 estimated tax penalty.
3. When appellant failed to pay the amount due, FTB issued appellant a Business Entity Final Notice Before Levy. Appellant did not respond, and FTB imposed a collection cost recovery fee of \$314 and issued an Electronic Order to Withhold Corporation Tax to

- appellant's bank. FTB received a payment of \$1,411.98 from appellant's bank.
- Appellant filed Form 2924 Reasonable Cause – Business Entity Claim for Refund requesting a refund of \$1,411.98. FTB denied appellant's claim for refund. This timely appeal follows.

DISCUSSION

In an action for refund, the taxpayer has the burden of proof. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) Appellant does not dispute that its return was filed late, or the imposition or computation of the penalties and interest. Instead, appellant requests a refund based on financial hardship exacerbated by the COVID-19 pandemic.

Appellant correctly self-assessed the \$800 minimum franchise tax pursuant to R&TC section 23153. Appellant does not cite to, and OTA is not aware of, statutory authority that would permit waiver of the minimum franchise tax due to a taxpayer's financial hardship. Accordingly, appellant has not established entitlement to a refund for the amount of the minimum franchise tax.

Appellant requests waiver of the late-filing penalty on the basis of financial hardship. The late-filing penalty may be abated where a taxpayer shows that that the failure to file a timely return occurred despite the exercise of ordinary business care and prudence, or that cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) Here, appellant only makes contentions regarding its ability to pay the tax, not its ability to timely file the return. Accordingly, appellant has not established entitlement to a refund for the amount of the late-filing penalty.

There is no reasonable cause exception to the estimated tax penalty imposed pursuant to R&TC section 19142. (See *Appeal of Weaver Equipment Co.* (80-SBE-048) 1980 WL 4976 [discussing the conditions for relief of the penalty imposed pursuant to R&TC section 25954, a predecessor statute to R&TC section 19142].) The estimated tax penalty will not be imposed in certain limited circumstances provided by law (see R&TC, § 19147). However, there is no argument or evidence that any of the limited exceptions apply here. Based on this, appellant has not established entitlement to a refund for the amount of the estimated tax penalty.

There is no reasonable cause exception to the imposition of interest, and interest can only be waived in certain limited circumstances when authorized by law. (*Appeal of Moy*, 2019-OTA-057P.) To obtain relief from interest, a taxpayer must qualify under R&TC sections 19104, 19112, or 21012. (*Id.*) OTA does not have jurisdiction to review FTB's action

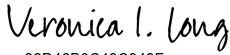
under R&TC section 19112. (*Id.*) Accordingly, to obtain relief, appellant must qualify under either R&TC section 19104 or R&TC 21012. R&TC section 19104 does not apply here because appellant does not allege, and the evidence does not show, that the interest at issue is attributable, in whole or in part, to any unreasonable error or delay by an officer or employee of FTB when performing a ministerial or managerial act. R&TC section 21012 does not apply as FTB did not provide appellant with any requested written advice. Therefore, appellant has not established entitlement to refund for the amount of interest paid.

HOLDING


Appellant is not entitled to a refund for the 2021 tax year.

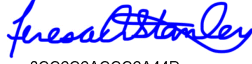
DISPOSITION

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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Amanda Vassigh
Administrative Law Judge

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Teresa A. Stanley
Administrative Law Judge

Date Issued: 1/28/2025