

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
MONJERI INVESTMENTS LLC) OTA Case No. 240616561
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OPINION

Representing the Parties:

For Appellant: Randee Roucoulet, CPA

For Respondent: Amelia W. Breen, Attorney

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Monjeri Investments LLC (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$1,932 plus interest for the 2021 taxable year.

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single panel member. (Cal. Code Regs., tit. 18, § 30209.05.) 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. Has appellant established reasonable cause to abate the late-filing penalty imposed pursuant to R&TC section 19131?
2. Has appellant established reasonable cause to abate the per partner late-filing penalty imposed pursuant to R&TC section 19172?
3. Has appellant established a basis to abate interest?

FACTUAL FINDINGS

1. Appellant is a California Limited Liability Company (LLC) with two members.
2. FTB issued a Demand for Tax Return to appellant on November 29, 2023, because appellant had not filed its 2021 California tax return.

3. Appellant filed its 2021 Limited Liability Company Return of Income late on December 28, 2023.
4. FTB imposed a late-filing penalty of \$1,500 pursuant to R&TC section 19131 and a per partner late-filing penalty of \$432 pursuant to R&TC section 19172, plus applicable interest.
5. Appellant paid \$1,932 and applicable interest and filed a claim for refund with FTB.
6. FTB denied appellant's claim for refund, and this timely appeal followed.

DISCUSSION

Issue 1: Has appellant established reasonable cause to abate the late-filing penalty imposed pursuant to R&TC section 19131?

California imposes a penalty for the failure to file a return on or before the due date, unless it is shown that the failure is due to reasonable cause and not due to willful neglect. (R&TC, § 19131.) When FTB imposes a penalty, the law presumes that the penalty was imposed correctly, and the burden of proof is on the taxpayer to establish otherwise. (*Appeal of Fisher*, 2022-OTA-337P.) To overcome the presumption of correctness attached to the penalty, a taxpayer must provide credible and competent evidence supporting a claim of reasonable cause; otherwise, the penalty cannot be abated. (*Ibid.*) To establish reasonable cause, a taxpayer must show 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. (*Ibid.*)

Here, appellant does not dispute that it filed its 2021 return late. Rather, appellant asserts that when the governor declared a state of emergency¹ in San Mateo County on December 21, 2021, "it should have automatically extended the due date of [appellant's] tax return to the summer of 2022." Additionally, appellant asserts that its members exercised ordinary business care and prudence based on their efforts to file extensions and to avoid "a foreseeable failure to file on time." Appellant contends it "[f]ixed the issue" of failing to file a timely LLC return by filing the return as soon as FTB sent a demand notice, and by hiring a firm to file its returns going forward. Appellant further asserts that it has a good compliance history; the failure was not intentional or willful; there was no harm to the government because the members filed their individual returns reporting the income and paying the tax; no other parties

¹ The state of emergency related to a series of winter storm systems in 2021, which brought substantial precipitation, including record-breaking snowfall, damaging winds, and flooding.

were affected; and the members did not realize appellant needed to file a tax return if the members filed their individual returns reporting the pass-through income.

With respect to appellant's first argument that the state of emergency declared by the governor should have automatically extended the due date, the filing deadline for appellant's 2021 return was not, in fact, postponed or extended as a result of the winter storms. Moreover, even if the filing due date had been extended to the summer of 2022, as appellant contends, appellant did not file the return until December of 2023. Appellant has not established reasonable cause on this basis.

Appellant's additional assertions also do not establish that appellant acted with ordinary business care and prudence. FTB does not allege, and the record does not reflect, that appellant acted in bad faith or that appellant held any bad intentions. Appellant is also correct that appellant filed soon after receiving a demand notice sent by FTB and that there was no harm to other parties.² However, FTB is not obligated to send notices to appellant in order for it to meet its tax obligations in a timely manner. Reasonably prudent businesspersons understand that there are tax deadlines and arrange to ensure those deadlines are met. It takes no special skill set or talent to know that there are unambiguous due dates for filing returns and paying taxes. (*Appeal of Mazdyasni*, 2018-OTA-049P.) Additionally, while appellant asserts that it was not aware of the requirement to file tax returns if all the members filed returns reporting the pass-through income, ignorance of the law is not an excuse for failing to file a timely return. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.)

Lastly, appellant's assertion that it has a good compliance history fails as well. R&TC section 19132.5 allows a one-time abatement of timeliness penalties under certain circumstances but is only applicable to individual taxpayers and effective for taxable years beginning on or after January 1, 2022. (R&TC, § 19132.5(a), (f).) Appellant has not established that it exercised ordinary business care and prudence.

Issue 2: Has appellant established reasonable cause to abate the per partner late-filing penalty imposed pursuant to R&TC section 19172?

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 \$18 multiplied by the number of partners (or LLC members) for each month, or fraction thereof,

² With respect to appellant's claim that the government was not harmed, OTA notes that the late-filed tax return reported total tax and fee of \$6,800, payments of \$800, and tax and fee due of \$6,000, which suggests that FTB did not receive full payment of the tax and fee due in a timely manner.

that the return is late, up to a maximum of 12 months. (R&TC, § 19172(b).) Appellant had two members during the 2021 taxable year and filed its tax return more than a year after the original due date. Therefore, FTB properly imposed a \$432 per partner late-filing penalty.

The penalty may 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*, 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.*)

Appellant presents the same arguments for abatement of both the late-filing penalty imposed pursuant to R&TC section 19131 and the per partner late-filing penalty imposed pursuant to R&TC section 19172. OTA finds those arguments unavailing for both penalties. For the reasons discussed above, appellant has not established that it acted as would a reasonably prudent businessperson under similar circumstances. Therefore, the per partner late-filing penalty may not be abated.

Issue 3: Has appellant established a basis to abate interest?

Interest is required to be assessed from the date a tax payment is due through the date that it is paid. (R&TC, § 19101.) 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. Neither is relief pursuant to R&TC section 19112 relevant here because appellant does not allege extreme financial hardship caused by significant disability or other catastrophic circumstances, and OTA does not have authority to review FTB's abatement of interest on that basis. (See *Appeal of Moy*, 2019-OTA-057P.)

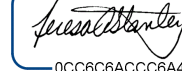
HOLDINGS

1. Appellant has not established reasonable cause to abate the late-filing penalty imposed pursuant to R&TC section 19131.
2. Appellant has not established reasonable cause to abate the per partner late-filing penalty imposed pursuant to R&TC section 19172.
3. Appellant has not established a basis to abate interest.

DISPOSITION

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

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Teresa A. Stanley
Administrative Law Judge

Date Issued: 1/27/2025