

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
TOPLINE CAPITAL PARTNERS, LP) OTA Case No. 240215512
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OPINION

Representing the Parties:

For Appellant: Lindsey Layman, Representative

For Respondent: Rosemary Villasenor, Senior Legal Analyst

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Topline Capital Partners, LP (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$8,040.31 for the 2019 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 to abate the partnership late filing penalty.
2. Whether appellant has established a basis to abate interest.
3. Whether appellant has established a basis to abate the collection cost recovery fee.

FACTUAL FINDINGS

1. Appellant remitted a payment of \$800 for the 2019 tax year on March 15, 2020. FTB had no record of a return, so FTB issued an Unclaimed Business Entity Payment Notice to appellant, stating that FTB had received a payment, but no 2019 tax return had been filed.
2. Appellant filed its 2019 Partnership tax return on August 26, 2022, reporting minimum tax of \$800. FTB accepted the return and imposed a partnership late filing penalty of

- \$7,992. FTB issued a Notice of Balance Due on April 13, 2023. No payment was received and FTB issued a Past Due Notice and a Final Notice Before Levy. As a result of its collection activity, FTB imposed a collection cost recovery fee of \$332.
3. Only July 10, 2023, appellant made a payment of \$7,992. Appellant filed a claim for refund on August 11, 2023. On September 12, 2023, appellant made a payment of \$451.40, fully satisfying the outstanding balance for the 2019 tax year.
 4. FTB denied appellant's claim for refund and appellant filed this timely appeal.

DISCUSSION

Issue 1: Whether appellant has established reasonable cause to abate the partnership late filing penalty.

R&TC section 19172 imposes a per-partner partnership late filing penalty under R&TC section 19172, which is computed by multiplying \$18 by the number of partners by the number of months, or fraction thereof, that the return is late (not to exceed 12 months). (R&TC, § 19172(a), (b).)

When FTB imposes a penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) The burden of proof is on the taxpayer to show that reasonable cause exists to support an abatement of the partnership late filing penalty. (*Ibid.*) To overcome the presumption of correctness that attaches 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, the taxpayer must show that the failure to file a timely return occurred despite the exercise of ordinary business care and prudence, or that such cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of Head and Feliciano*, 2020-OTA-127P.)

Here, the filing deadline for appellant's 2019 tax return was March 15, 2020. (R&TC, § 18633.) However, as a result of COVID-19, the filing deadline was extended to July 15, 2020.¹ Appellant did not file its 2019 California tax return until August 26, 2022, over two years later. Therefore, the partnership late filing penalty was correctly imposed.

Appellant argues that it attempted to timely file its return, but because of COVID-19, its preparer failed to properly file the return. FTB's records show that appellant's 2019 return was

¹ See FTB, *State Postpones Tax Deadlines Until July 15 Due to the COVID-19 Pandemic*, news release (March 18, 2020) 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.

rejected on April 13, 2020. Appellant had a non-delegable obligation to timely file the return. The failure to file a return that is caused by an oversight (whether the taxpayer's own or its accountant) is not reasonable cause. (*Appeal of Auburn Old Town Gallery, LLC*, 2019-OTA-319P; *Appeal of Friedman*, 2018-OTA-077P.) Appellant also argues that FTB did not notify it that its return was not properly filed. However, appellant provides no supporting law that imposes on FTB a duty (whether fiduciary, agency, or otherwise) to take measures to ensure taxpayers timely meet their payment obligations. OTA has held that "an ordinarily intelligent and prudent businessperson would have viewed the E-File History and acknowledgment records to confirm whether the return had been timely transmitted, received, and accepted." (*Appeal of Quality Tax & Financial Services, Inc.*, 2018-OTA-130P.) Appellant has not shown what it has done to ensure the return was filed on time. Therefore, appellant has not shown reasonable cause for the failure to timely file the return.

Issue 2: Whether appellant has established a basis to abate interest.

The imposition of interest is mandatory and accrues on a tax deficiency regardless of the reason for the underpayment. (R&TC, § 19101(a); *Appeal of Balch*, 2018-OTA-159P.) There is no reasonable cause exception to the imposition of interest. (*Appeal of Moy*, 2019-OTA-057P.) To obtain interest relief, appellant must qualify under one of the provisions of R&TC sections 19104 (pertaining to unreasonable error or delay by FTB in the performance of a ministerial or managerial act), 19112 (pertaining to extreme financial hardship caused by significant disability or other catastrophic circumstance),² or 21012 (pertaining to reasonable reliance on the written advice of FTB). (*Ibid.*) Appellant does not allege, and the record does not reflect, that any of these provisions are applicable here. Therefore, there is no legal basis for interest abatement.

Issue 3: Whether appellant has established a basis to abate the collection cost recovery fee.

R&TC section 19254(a)(1) requires FTB to impose a collection cost recovery fee when FTB notifies a taxpayer that the continued failure to pay an amount due may result in the imposition of the fee, and the taxpayer fails to timely pay the amount due in response to the notice. The amount of the fee is adjusted annually to reflect actual enforcement costs. (R&TC, § 19254(b).) There is no reasonable cause defense to the imposition of the fee; thus, OTA's inquiry is limited to determining whether FTB complied with the statutory notice requirements for imposing the collection cost recovery fee. (*Appeal of Auburn Old Town Gallery, LLC, supra.*)

² OTA does not have the legal authority to review or overturn FTB's denial of a waiver of interest based on extreme financial hardship. (*Appeal of Moy, supra.*)


For the 2019 tax year, FTB issued appellant a Past Due Notice and Final Notice before Levy indicating that collection action would commence in the absence of payment within 30 days and a collection fee may be imposed. Appellant did not timely pay the amount due for either of the notices. The collection cost recovery fee was required to be imposed by R&TC section 19254 because appellant failed to pay the liabilities after receiving notices stating that continued failure to pay the liabilities may result in imposition of the fee. Therefore, the collection cost recovery fees were properly imposed and cannot be abated.

HOLDINGS

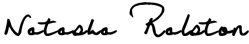
1. Appellant has not established reasonable cause to abate the partnership late filing penalty.
2. Appellant has not established a basis to abate interest.
3. Appellant has not established a basis to abate the collection cost recovery fee.


DISPOSITION

FTB's action is sustained.

DocuSigned by:

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 Sara A. Hosey
 Administrative Law Judge

We concur:

Signed by:

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 Natasha Ralston
 Administrative Law Judge

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 Huy "Mike" Le
 Administrative Law Judge

Date Issued: 1/31/2025