

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
**UNSTOPPABLE LLC** ) OTA Case No. 240315635  
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**OPINION**

Representing the Parties:

For Appellant: Mark Nashed, Representative

For Respondent: Leoangelo C. Cristobal, Attorney

E. PARKER, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Unstoppable LLC (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$632 for the 2020 tax year.<sup>1</sup>

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 a basis to abate the per-partner late filing penalty (per-partner penalty).
2. Whether appellant has established a basis to abate the late payment penalty.

**FACTUAL FINDINGS**

1. Appellant is a California limited liability company (LLC) that is classified as a partnership for income tax purposes.
2. On December 5, 2022, appellant filed an untimely tax return for the 2020 tax year reporting an annual LLC tax due of \$800 and self-assessing penalties and interest of

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<sup>1</sup> FTB originally denied a claim for refund of \$1,567.54, which erroneously included appellant’s annual limited liability company tax of \$800. On appeal, FTB issued a corrected claim for refund denial of \$632, comprised of a \$432 per-partner late filing penalty and a \$200 late payment penalty.

- \$388, for a total reported amount due of \$1,188. Appellant did not remit a payment upon filing the return.
3. On October 18, 2023, FTB sent appellant a Limited Liability Company Past Due Notice to inform appellant that it had not paid the balance due for the 2020 tax year. The outstanding balance was comprised of the \$800 annual LLC tax, a late payment penalty of \$200, and a per-partner penalty of \$432, plus interest.
  4. On December 19, 2023, appellant paid the balance due for the 2020 tax year. Subsequently, appellant filed a claim for refund of the penalties and interest based on reasonable cause.
  5. FTB denied the claim for refund, and appellant filed this timely appeal.

### DISCUSSION

#### Issue 1: Whether appellant has established a basis to abate the per-partner penalty.

R&TC section 19172 imposes a per-partner penalty when a partnership (or an LLC classified as a partnership) fails to file a timely return. An LLC classified as a partnership for California tax purposes that is doing business in California must file a return on or before the 15th day of the third month following the close of its taxable year. (R&TC, § 18633.5(a).) Alternatively, the LLC may file its return on or before the automatic extended due date, which is seven months after the original filing due date. (R&TC, § 18567(a)(2)(B).) Therefore, for an LLC classified as a partnership, the 2020 tax return was due on or before October 15, 2021.

The per-partner penalty will be abated if it is established the late filing was due to reasonable cause. (R&TC, § 19172(a).) 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.) The burden of proof is on the taxpayer to provide credible and competent evidence supporting a claim of reasonable cause. (*Appeal of Xie*, 2018-OTA-076P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.)

Appellant does not argue the per-partner penalty was improperly imposed or computed. Rather, appellant requests a refund of the penalty based on reasonable cause due to the unforeseen challenges of the COVID-19 pandemic that impacted appellant's ability to meet its tax payment deadlines. Appellant asserts that it "encountered numerous impediments, including mandated closures, reduced workforce availability, and financial constraints" that "directly impeded [its] capacity to meet the tax obligations on time," despite its sincere efforts to do so.

Appellant provides no evidence in support of the specific difficulties it encountered that prevented it from timely filing the return.<sup>2</sup> Appellant fails to show that its inability to timely file the 2020 return occurred despite having acted as an ordinarily intelligent and prudent businessperson would have acted under similar circumstances. (*Appeal of Auburn Old Town Gallery, LLC, supra.*) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of GEF Operating, Inc., supra.*) As such, appellant has not established a basis to abate the per-partner penalty.

Issue 2: Whether appellant has established a basis to abate the late payment penalty.

An LLC doing business in California must pay an annual LLC tax of \$800 on or before the 15th day of the fourth month of the LLC's tax year. (R&TC, § 17941(a), (c).) R&TC section 19132 imposes a late payment penalty on an LLC that fails to pay the annual LLC tax of \$800 by the due date unless it is shown that the failure is due to reasonable cause and not willful neglect. Similar to the issue discussed above, reasonable cause exists when the taxpayer acted as an ordinarily intelligent and prudent businessperson would have acted under similar circumstances. (*Appeal of Triple Crown Baseball, LLC, 2019-OTA-025P.*) In other words, a taxpayer must show that the failure to meet its tax obligation occurred despite the exercise of ordinary business care and prudence. (*Ibid.*)

Here, appellant failed to pay the annual LLC tax for the 2020 tax year by the statutory due date of April 15, 2020. (R&TC, § 17941(c).) Appellant does not argue that the imposition of the late payment penalty is improper, or that the computation of the penalty is incorrect. Rather, appellant requests a refund of the penalty based on the same reasonable cause arguments presented above related to the difficulties encountered due to the COVID-19 pandemic.

However, appellant provides no evidence in support of the specific difficulties it encountered that prevented it from paying the annual LLC tax until December 19, 2023, over three and one-half years late. Appellant has not shown that the failure to timely pay the tax occurred despite the exercise of ordinary business care and prudence. (*Appeal of Triple Crown Baseball LLC, supra.*) As such, appellant has not established reasonable cause to abate the late payment penalty.

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<sup>2</sup> OTA notes the return filed on December 5, 2022, indicates it was prepared by appellant's tax preparer on October 14, 2021, within the seven-month extension period.


HOLDINGS

1. Appellant has not established a basis to abate the per-partner penalty.
2. Appellant has not established a basis to abate the late payment penalty.

DISPOSITION

FTB's action is sustained.

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 Erica Parker  
 Hearing Officer

We concur:  
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 Josh Lambert  
 Administrative Law Judge

Signed by:  
  
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 Seth Elsom  
 Hearing Officer

Date Issued: 4/10/2025