

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

In the Matter of the Appeal of:  
**ECOR1 CAPITAL, LLC**

) OTA Case No. 240215269  
)  
)  
)  
)

**OPINION**

Representing the Parties:

For Appellant:

Rachel R. Caldwell, Representative

For Respondent:

Leoangelo C. Cristobal, Attorney

M. GEARY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, EcoR1 Capital, LLC (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant's claim for refund of a late-payment penalty and interest totaling \$135,815.17 for the 2021 tax year.<sup>1</sup>

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

**ISSUES**

1. Is appellant entitled to abatement and refund of the late-payment penalty?
2. Is appellant entitled to abatement and refund of interest?

**FACTUAL FINDINGS**

1. Appellant filed its 2021 Limited Liability Company Return of Income by the September 15, 2022 extended due date, reporting total tax of \$8,402,560, timely payments totaling \$8,472,590,<sup>2</sup> and an overpayment of \$70,030.

---

<sup>1</sup> According to respondent, the late-payment penalty totaled \$126,052.35 and interest totaled \$9,461.09. It is not clear how appellant calculated the amount of the claim.

<sup>2</sup> The reported timely payments were an extension payment of \$12,590 and a pass-through entity (PTE) elective tax of \$8,460,000.

2. Respondent's records showed appellant made timely payments of only \$6,111,790,<sup>3</sup> \$2,290,770 less than the reported tax due by March 15, 2022.
3. Respondent imposed a late-payment penalty of \$126,052.35 and applicable interest.
4. Appellant paid the remaining tax due and filed a timely claim for refund of the late-payment penalty and interest.
5. By letter dated September 29, 2023, respondent denied the claim for refund.
6. This timely appeal to OTA followed.

### DISCUSSION

#### Issue 1: Is appellant entitled to abatement and refund of the late-payment penalty?

Appellant's return and payment for the 2021 tax year was due by March 15, 2022. (R&TC, § 18633.5(a)(1).) The pass-through entity (PTE) elective tax is due at the same time. (R&TC, § 19904(a)(1).) An extension of time to file a return pursuant to R&TC section 18604(a) is not an extension of time for payment of the tax due. (R&TC, §§ 18604(b), 19904(a)(1).) Appellant did not timely pay the remaining tax due.

The law requires respondent to impose a penalty when a taxpayer fails to timely pay an amount shown as tax on the return unless the taxpayer shows that the failure was due to reasonable cause and not due to willful neglect. (R&TC, §19132(a)(1)(A).) There appears to be no dispute that appellant did not pay the tax by the due date and that respondent correctly calculated the late-payment penalty.<sup>4</sup> Consequently, unless appellant can show that the late payment was due to reasonable cause and not due to willful neglect, respondent properly imposed a late-payment penalty, and it cannot be abated.

A late-payment penalty may be abated if the taxpayer shows that its failure to timely pay was due to reasonable cause and not due to willful neglect. (R&TC, § 19132(a)(1).) To establish reasonable cause for a late payment of tax, a taxpayer must show that the failure to make a timely payment occurred despite the exercise of ordinary business care and prudence. (R&TC, § 19132(a)(1); *Appeal of Rougeau*, 2021-OTA-335P.) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly

---

<sup>3</sup> The payments were an \$11,790 LLC fee on March 3, 2021, and a PTE elective tax payment of \$6,100,000 on December 27, 2021.

<sup>4</sup> The late-payment penalty is the sum of two figures that may not exceed 25 percent of the unpaid tax. (R&TC, § 19132(a)(2).) The first addend is five percent of the tax that remained unpaid as of the due date. (R&TC, § 19132(a)(2)(A).) The second addend is 0.5 percent of the unpaid tax balance per month for each month, or portion of a month, that the tax remains unpaid after the due date, not to exceed 40 months. (R&TC, § 19132(a)(2)(B).)

under the circumstances. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.) This is an objective standard,<sup>5</sup> meaning that the taxpayer's sincere belief that they are following the law is not determinative. (See *Appeal of Cremel and Koeppel*, 2021-OTA-222P.)<sup>6</sup> Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of Porreca*, 2018-OTA-095P.) When respondent imposes a penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.)

Appellant argues that it calculated its PTE elective tax payment on the basis of its total tax liability for the prior tax year and that it was not aware of an increase in its income until it received all of its Schedule K-1 forms (K-1 forms) after March 15, 2022. Appellant contends that it reasonably believed it had paid the correct tax due by March 15, 2022, and that it did not have access to more accurate information until it received its K-1 forms.

Appellant's arguments are not supported by evidence. There is nothing in OTA's record that shows when appellant received its K-1 forms or what those forms revealed. Furthermore, an asserted lack of documentation or other difficulty in calculating a tax liability does not, alone, constitute reasonable cause for a late payment of tax. (*Appeal of Moren*, 2019-OTA-176P.) When a taxpayer relies on others to provide information upon which an accurate calculation of tax depends, the taxpayer cannot simply wait for the information and point to its late arrival (i.e., after a return or payment was due) as evidence of reasonable cause. (*Ibid.*) Rather, the taxpayer must prove the late payment was due to a lack of information and the actions taken to acquire the information. (*Ibid.*) Appellant has not proved facts upon which OTA can conclude that the taxpayer acted the way an ordinarily intelligent and prudent businessperson would have acted under similar circumstances. Therefore, OTA finds that appellant is not entitled to abatement and refund of the late-payment penalty.

Issue 2: Is appellant entitled to abatement and refund of interest?

If any amount of tax is not paid by the due date, respondent is required to impose interest from the payment due date until the date the taxes are paid. (R&TC, § 19101(a).) Interest is not a penalty. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) Rather, it is compensation for the taxpayer's use of money that should have been paid to respondent.

---

<sup>5</sup> See *U.S. v. Boyle* (1985) 469 U.S. 241, 248 fn. 6, cited with approval in *Conklin Bros. of Santa Rosa, Inc. v. United States* (9th Cir. 1993) 986 F.2d 315, 318.

<sup>6</sup> Since the issue of whether a taxpayer has demonstrated reasonable cause for failure to pay tax asks the same questions and weighs the same evidence as the inquiry of whether reasonable cause exists for failure to file a tax return, decisions analyzing whether reasonable cause existed for failure to timely file a tax return are persuasive authority for determining whether reasonable cause existed for the failure to timely pay the tax. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.)

Imposition of interest is mandatory, and it can only be abated in certain limited situations when authorized by law.<sup>7</sup> (R&TC, § 19101(a); *Appeal of GEF Operating, Inc., supra.*) Here, appellant relies on the same reasonable cause argument that it asserts for Issue 1, above, but there is no reasonable cause exception to the imposition of interest. (*Appeal of GEF Operating, Inc., supra.*) Consequently, OTA rejects appellant's reasonable cause argument and finds that appellant is not entitled to abatement and refund of interest.

### HOLDINGS

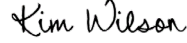
1. Appellant is not entitled to abatement and refund of the late-payment penalty.
2. Appellant is not entitled to abatement and refund of interest.

### DISPOSITION

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

DocuSigned by:  
  
1A9D62EF88A6467...  
Michael F. Geary  
Administrative Law Judge

We concur:

Signed by:  
  
4E0E740EDB8840D...  
Kim Wilson  
Hearing Officer

Signed by:  
  
C04CD432E3284FD...  
Seth Elsom  
Hearing Officer

Date Issued: 6/11/2025

---

<sup>7</sup> Circumstances that warrant relief of interest are described in R&TC sections 19104 (unreasonable error or delay by respondent) and 21012 (reasonable reliance on respondent's written advice). Neither ground is asserted or shown by the evidence here.