OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 231214921

MARSHALL RANCHES, LLC

OPINION

Representing the Parties:

For Appellant: Susan L. Gilbert, Representative

For Respondent: Tristen Thalhuber, Attorney
Jaclyn Zumaeta, Deputy Chief Counsel

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Marshall Ranches, LLC (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant's claim for refund of $944 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(b).)

Office of Tax Appeals (OTA) Administrative Law Judge Veronica I. Long held an oral hearing for this matter in Fresno, California, on April 22, 2025. At the conclusion of the oral hearing, the record was closed, and this matter was submitted on the oral hearing record pursuant to California Code of Regulations, title 18, section 30209(b).

ISSUES

1. Whether appellant has established a basis to abate the late filing penalty.
2. Whether appellant has established a basis to abate the late payment penalty.

FACTUAL FINDINGS

1. Appellant is a Limited Liability Company (LLC) classified as a partnership for tax purposes. For the 2021 taxable year, appellant had five partners, and its taxable year began January 1, 2021, and ended December 31, 2021.
2. On May 3, 2021, FTB received an $800 payment on appellant's 2021 account.

3. On January 15, 2023, FTB received appellant's 2021 LLC Return (Form 568), reporting zero tax due.
4. FTB processed appellant's return and issued appellant an LLC - Notice of Balance Due informing appellant that it had a balance due, including a $900 late filing penalty and a $44 late payment penalty.
5. Appellant made a payment satisfying the liability and submitted a claim for refund requesting abatement of the penalties.
6. FTB denied appellant's claim for refund. This timely appeal followed.

DISCUSSION

Issue 1: Whether appellant has established a basis to abate the late filing penalty.

R&TC section 19172 imposes a per-partner late filing penalty on a partnership for the failure to file a return on or before the due date, unless it shows that the late filing is due to reasonable cause. For LLCs classified as partnerships, the due date of the return (without regard to any extension) is the 15th day of the third month following the close of the taxable year. (R&TC, § 18633.5(a).)

When FTB imposes a penalty, the law presumes that the penalty was imposed correctly, and the burden of proof is on the taxpayer to show that reasonable cause exists to support abating the penalty. (*Appeal of Xie*, 2018-OTA-076P.) To establish that a failure to act was due to reasonable cause, the taxpayer must show that the failure 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 Summit Hosting LLC*, 2021-OTA-216P.)

Appellant's return was due March 15, 2022, and FTB's records reflect that it did not receive the return until January 15, 2023, or ten months later. FTB imposed the per-partner late filing fee of $18 per month per partner for the period of ten months, or $900. Appellant contends that it attempted to file the return on February 23, 2022, but that the return was rejected by FTB. As support, appellant presents a copy of the confirmation from its tax filing software showing that it attempted to file the return that date. Appellant also submits a copy of the rejection notice from its tax software. Appellant contends that it acted with ordinary business care and prudence, that the return was erroneously rejected by FTB, and that the amount of penalty, if any, should be reduced to reflect appellant's longstanding history of timely filing and paying taxes.

While appellant's frustration is understandable, OTA has held that ordinary business care and prudence requires a taxpayer to ensure that a return submitted for e-filing was successfully transmitted to, and accepted by, FTB. "In the absence of an acknowledgment that a return was transmitted, received, or accepted, 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 by [the tax software], and accepted [by FTB]." (*Appeal of Quality Tax & Financial Services, Inc.*, 2018-OTA-130P.) Here, it appears that appellant may have used its Federal Employer Identification Number rather than its California Secretary of State filing number when filing its return, which may have caused the return's rejection. While appellant did transmit its return, ordinary business care and prudence required appellant to confirm acceptance of its return by FTB and it did not do so. Accordingly, appellant has not demonstrated that reasonable cause exists to support abating the penalty.

Lastly, appellant requests abatement based on its filing compliance history; however, OTA lacks authority to grant the requested relief based on appellant's good filing history. R&TC section 19132.5 authorizes one-time abatement of state income taxes for *individual* filers with a good filing history for tax years starting on and after January 1, 2022. Here, the tax year at issue is the 2021 tax year and appellant is a business entity, not an individual filer, and thus, OTA is not authorized to grant appellant's request for a one-time abatement of the late filing penalty.

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

If a taxpayer fails to pay the total amount due on the return by the payment due date, FTB shall impose an underpayment penalty equal to 5 percent of the unpaid tax (the underpayment penalty) and a monthly penalty equal to 0.5 percent of the unpaid tax for each month the tax remains unpaid. (R&TC, § 19132.) LLCs doing business in California are subject to the annual minimum franchise tax, which is due and payable on or before the 15th day of the fourth month of the LLC's taxable year. (R&TC, § 17941.) Appellant's taxable year is the calendar year, and thus, appellant's $800 payment was due on or before April 15, 2021. Appellant paid this amount May 3, 2021, or 1 month later. Accordingly, the 2021 late payment penalty is $44, comprised of an underpayment penalty of $40 ($800 x 0.05) plus the monthly penalty of $4 ($800 x 0.005 x 1 month).

Appellant contends that the late payment penalty should be waived because it paid the $800 fee online on February 23, 2022. However, FTB's records reflect that appellant paid the $800 on May 3, 3021, much earlier than the date it now contends that it made the payment. If appellant had not made the payment until February 2022, the late payment would be greater. Appellant has not established error in FTB's imposition of the late payment penalty, or cause to abate it.

HOLDINGS

1. Appellant has not established a basis to abate the late filing penalty.
2. Appellant has not established a basis to abate the late payment penalty.

DISPOSITION

FTB's denial of the claim for refund is sustained.

Signed by:
Veronica I. Long
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Veronica I. Long
Administrative Law Judge

Date Issued: 6/11/2025