

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

In the Matter of the Appeal of: )  
**ALMACAL FLORIDA LLC** ) OTA Case No. 240415845  
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**OPINION**

Representing the Parties:

For Appellant: Aykut Akcaoglu, Representative  
For Respondent: Sophie Kuehl, Attorney  
Brad Coutinho, Assistant Chief Counsel

A. VASSIGH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Almacal Florida LLC (appellant) appeals actions by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$432 for the 2020 tax year and appellant’s claim for refund of \$432 for the 2021 tax year.<sup>1</sup>

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).)

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).

**ISSUE**

Whether appellant has established reasonable cause to abate the per-partner late filing penalty imposed under R&TC section 19172 for the 2020 tax year or the 2021 tax year.

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<sup>1</sup> Appellant submitted two claims for refund to FTB in the amount of \$400. FTB denied appellant’s claim for refund of \$432 for each tax year, reflecting the correct amount of each of the penalties. In this appeal, appellant listed \$432 for each tax year.

### FACTUAL FINDINGS

1. Appellant, a limited liability company (LLC) classified as a partnership, untimely filed its 2020 California Limited Liability Company Return of Income tax return (FTB Form 568) on March 29, 2023. Appellant's 2020 return indicates that it reported on a calendar year basis and appellant had a maximum of two LLC members. Appellant reported a minimum franchise tax due in the amount of \$800, which it previously paid on March 5, 2020.
2. Appellant untimely filed its 2021 California Limited Liability Company Return of Income tax return (FTB Form 568) on March 24, 2023. Appellant's 2021 return indicates that it reported on a calendar year basis and appellant had a maximum of two LLC members. Appellant reported a minimum franchise tax due in the amount of \$800, which it previously paid on April 15, 2021.
3. On June 28, 2023, FTB mailed appellant a Notice of Balance Due in the amount of \$864, which included a per-partner late filing penalty of \$432 for the 2020 tax year and a per-partner late filing penalty of \$432 for the 2021 tax year.
4. Subsequently, appellant made a payment and submitted to FTB claims for refund for tax year 2020 and tax year 2021.
5. FTB denied each of appellant's claims for refund.
6. Appellant then filed this timely appeal.

### DISCUSSION

Every LLC classified as a partnership for California tax purposes, that is doing business in California, organized in California, or registered with the California Secretary of State, shall file its return on or before the 15th day of the third month following the close of its tax 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).)

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) that the return is late, up to a maximum of 12 months. (R&TC, § 19172(b).)

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 does not dispute that it filed its 2020 and 2021 returns late. Rather, appellant requests abatement of the penalties based on reasonable cause because it experienced “significant financial hardship for an extended period” during 2020 and 2021. Appellant also asserts that its tax advisor instructed it to postpone filing its returns for these tax years. Appellant states that it “actively sought assistance from professionals to take necessary actions in addressing [its] tax obligations.” Appellant also contends that it has a consistent record of timely filing and paying its taxes. Appellant has not provided documents or corroborating evidence supporting any of these statements. Unsupported assertions are not enough to satisfy appellant’s burden of proof. (*Appeal of Bannon*, 2023-OTA-096P.) Nonetheless, OTA examines appellant’s arguments below.

Appellant fails to show that its failure to timely file the 2020 and 2021 returns occurred despite having acted as an ordinarily intelligent and prudent businessperson would have acted under similar circumstances. It is reasonable to expect that businesspersons would know that there are tax deadlines and would arrange to ensure that those deadlines are met. Additionally, ignorance of the law is not an excuse for failing to file a timely return. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) With respect to appellant’s argument that it experienced significant financial hardship during 2020 and 2021, appellant provides no evidence showing the specific difficulties it encountered that prevented it from timely filing its returns nor the efforts it took (and at what point) to address its tax obligations. Appellant also claims that its tax advisor instructed it to postpone filing its 2020 and 2021 returns, but it does not provide an explanation for this advice, nor documentation that substantiates that such advice was given.

Appellant’s contention that it is entitled to abatement of the penalties because 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 it is only applicable to individual taxpayers and effective for tax years beginning on or after January 1, 2022. (R&TC, § 19132.5(a), (f).) There is thus no authority for granting appellant abatement of these penalties due to its good compliance history.

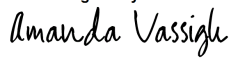
For the reasons discussed above, appellant has failed to meet its burden of proving reasonable cause for the late filing of its return for tax year 2020 or tax year 2021. Accordingly, neither penalty may be abated.

HOLDING

Appellant has not established reasonable cause to abate the per-partner late filing penalty imposed under R&TC section 19172 for the 2020 tax year or the 2021 tax year.

DISPOSITION

FTB's actions are sustained.

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Amanda Vassigh  
Administrative Law Judge

Date Issued: 6/18/2025