

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 240415788
APLUSLIVES (A+LIVES) L.L.C.)
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OPINION

Representing the Parties:

For Appellant: Yuanjian Liu, Representative

For Respondent: Shah Khan, Program Specialist
Alisa L. Pinarbasi, Attorney

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, APlusLives (A+Lives) L.L.C. (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing tax of \$800, penalties and fees totaling \$740, and applicable interest for the taxable year ending December 31, 2020.¹

Office of Tax Appeals (OTA) Panel Members Veronica I. Long, Steven Kim, and Erica Parker held a virtual oral hearing for this matter on June 26, 2025. At the conclusion of the hearing, the record was closed. On July 18, 2025, the record was reopened to allow for additional briefing. Upon receipt of additional briefing, the record was closed on September 17, 2025, and this matter was submitted for an opinion pursuant to California Code of Regulations, title 18, (Regulation) section 30209(b).

ISSUES

1. Whether appellant owes the annual Limited Liability Company (LLC) tax for taxable year ending December 31, 2020.
2. Whether the per-partner late filing penalty was properly imposed.
3. Whether appellant has established a basis to abate the demand penalty.
4. Whether appellant has established a basis to abate the filing enforcement fee.

¹ Although the amount stated in appellant's appeal includes interest, appellant's appeal does not discuss or dispute interest and the record does not support interest abatement. Therefore, the amount of interest accrued will not be discussed in this appeal.

FACTUAL FINDINGS

1. Appellant is a single member LLC (SMLLC) that filed articles of organization with the California Secretary of State (SOS) on August 30, 2019. Appellant did not file an LLC tax return (Form 568) for the taxable year ending December 31, 2020.
2. On May 24, 2023, FTB issued appellant a Demand for Tax Return (Demand) that required a response by June 28, 2023. When appellant did not respond, FTB issued appellant a Notice of Proposed Assessment (NPA) proposing an annual tax of \$800, a \$200 demand penalty, a \$432 per-partner late filing penalty, a \$108 filing enforcement fee, and interest.
3. Appellant protested the NPA on the basis that it did not conduct business in 2020 and did not receive income.
4. FTB issued appellant a determination letter informing appellant that it was required to file a business entity tax return for the taxable year ending December 31, 2020, until the business entity filed a final tax return and formally filed a cancellation with the SOS. The determination letter stated that if appellant filed a return within 30 days, FTB would withdraw the NPA.
5. When appellant did not respond to FTB's determination letter, FTB issued appellant a Notice of Action (NOA) affirming the NPA. Appellant timely appeals.
6. On appeal, FTB reduced the per-partner late filing penalty from \$432 to \$216 because appellant had a single member.

DISCUSSION

FTB's determination of tax is presumed to be correct, and a taxpayer has the burden of proving error. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid.*) FTB's determinations cannot be successfully rebutted when the taxpayer fails to provide credible, competent, and relevant evidence as to the issues in dispute. (*Ibid.*)

Issue 1: Whether appellant owes the annual LLC tax for taxable year ending December 31, 2020.

R&TC section 17941(a) provides that an LLC must pay an \$800 annual minimum tax if one of three requirements are met: (1) the LLC is "doing business" in this state as defined in R&TC section 23101; (2) the LLC's articles of organization have been accepted by the SOS; or (3) a certificate of registration has been issued by the SOS. (R&TC, § 17941(a), (b)(1).) A

taxpayer is “doing business” in this state if it is organized or commercially domiciled in this state. (R&TC, § 23101(b)(1).) The annual minimum tax must be paid for each taxable year, or part thereof, until a certificate of cancellation of the LLC is filed with the SOS. (R&TC, § 17941(b)(1).)

No annual minimum LLC tax is due if either R&TC section 17946 or 17941(g) apply. Under R&TC section 17946, no annual minimum LLC tax is due if both: (1) the LLC did no business in this state during the taxable year and (2) the taxable year was 15 days or less. Under R&TC section 17941(g), an LLC is not subject to the annual minimum tax for the entity’s first taxable year if the entity organizes or registers with the SOS on or after January 1, 2021, and before January 1, 2024.

On appeal, appellant contends it did no business in the 2020 taxable year and received no income. Appellant contends that, because it did no business, its taxable year was 15 days or less. Appellant additionally contends that it should not be subject to the annual minimum LLC tax because this was appellant’s first taxable year.

Appellant is subject to the annual minimum LLC tax because appellant was organized in this state during the 2020 taxable year and did not file a certificate of cancellation with the SOS. (R&TC, § 17941(a), (b)(1).) Appellant’s contention regarding its taxable year is without merit because appellant’s taxable year was greater than 15 days. Appellant filed its articles of organization in 2019 and appellant’s articles of organization were not canceled with the SOS during 2020. Based on this, appellant’s taxable year was the entirety of taxable year 2020. (R&TC, § 23101(b)(1).) Therefore, appellant failed to satisfy the two-prong test set forth in R&TC section 17946. Relief is also unavailable to appellant under R&TC section 17941(g) because that section applies solely to entities that organized or registered with the SOS on or after January 1, 2021, and before January 1, 2024, and here, appellant was organized with the SOS in 2019. Accordingly, appellant is required to pay the annual minimum LLC tax for the taxable year ending December 31, 2020.

Issue 2: Whether the per-partner late filing penalty was properly imposed.

R&TC section 19172 imposes a per-partner 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 amount of the per-partner late filing penalty is computed by multiplying \$18 by the number of partners and by the number of months, or fraction thereof, that the return is late (not to exceed 12 months). (R&TC, § 19172(a)(2).)

FTB’s NOA assessed the per-partner late filing penalty as if appellant had two partners.

On appeal, FTB reduced the amount of the penalty to reflect that, as an SMLLC, appellant has a single member. However, it is unclear whether the per-partner late filing penalty can be imposed on an SMLLC, which is neither a partnership nor an LLC classified as a partnership. Instead, an SMLLC that is not a corporation² is generally disregarded for tax purposes.³

As support for imposing the per-partner late filing penalty to an SMLLC, FTB cites to *Appeal of Patient Comfort Services, LLC* (“*Patient Comfort*”), 2021-OTA-300P, in which OTA held that the demand penalty was properly imposed on an SMLLC. OTA reasoned that although R&TC section 23038(b)(2)(B)(iii) states that an SMLLC is disregarded for purposes of Part 10.2 of the R&TC, and the demand penalty is under Part 10.2, the demand penalty applies to “any taxpayer.” (*Patient Comfort, supra.*) Since SMLLCs are subject to the filing requirement of R&TC section 18633.5,⁴ OTA reasoned that SMLLCs are also subject to the demand penalty as it relates to enforcing filing requirements. (*Ibid.*) OTA noted that the late payment penalty under R&TC section 19132 and late filing penalty under R&TC section 19131 had also been correctly imposed on SMLLCs in the past although the penalties are within Part 10.2. (*Ibid.* see also *Appeal of Summit Hosting*, 2021-OTA-216P; *Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P).

In contrast to the demand penalty that was analyzed in *Patient Comfort*, the per-partner late filing penalty under R&TC section 19172 does not apply to “any taxpayer” and only applies to partnerships, or LLCs classified as partnerships. Appellant is not a partnership or classified as a partnership. In contrast to the general late filing penalty and late payment penalty that were discussed in *Patient Comfort*, which also apply to “any taxpayer,” and therefore may be imposed on an SMLLC, the per-partner late filing penalty cannot. In this appeal, FTB has not imposed the late filing penalty under R&TC section 19131. It has only imposed the per-partner late filing penalty under R&TC section 19172. Because appellant is not a partnership, or an LLC classified as a partnership, OTA finds that the per-partner late filing penalty was not properly imposed.

² It is undisputed that appellant has not made a corporation election.

³ R&TC section 23038(b)(2)(B)(iii); *Appeal of Patient Comfort Services, LLC*, 2021-OTA-300P.

⁴ R&TC section 18633.5(i)(1) provides that every LLC that is “doing business in this state, organized in this state, or registered with the Secretary of State, that is a disregarded entity pursuant to section 23038 shall file a return [...].”

Issue 3: Whether appellant has established a basis to abate the demand penalty.

If any taxpayer fails or refuses to furnish any information requested in writing by FTB or fails or refuses to make and file a return upon notice and demand by FTB, then, unless the failure is due to reasonable cause, FTB may add a penalty of 25 percent of the amount of any tax assessment pertaining to the assessment of which the information or return was required. (R&TC, § 19133.) As discussed above, the demand penalty may be properly imposed on a SMLLC. (See *Patient Comfort, supra.*) To establish reasonable cause, a taxpayer's failure to respond to a Demand must be such that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of GEF Operating, Inc., supra.*)

Here, FTB determined that appellant had a filing requirement for the taxable year ending December 31, 2020, and appellant was given until June 28, 2023, to file a return. As of the date of this appeal, appellant has not filed a return. Appellant argues that it does not have a filing requirement, but as discussed above, appellant is required to file a return. Appellant has not provided any evidence demonstrating reasonable cause for failing to respond by the due date of June 28, 2023. Therefore, there is no basis to abate the demand penalty.

Issue 4: Whether appellant has established a basis to abate the filing enforcement fee.

If FTB mails a formal legal demand for a tax return to a taxpayer, a filing enforcement cost recovery fee is required to be imposed when the taxpayer fails or refuses to file the return within the prescribed time period. (R&TC, § 19254(a)(2)). Once properly imposed, there is no provision in the R&TC which would excuse FTB from imposing the filing enforcement cost recovery fee for any circumstances, including reasonable cause. (R&TC, § 19254; *Appeal of GEF Operating, Inc., supra.*) Here, FTB issued appellant a Demand to file a tax return for the taxable year ending December 31, 2020, by June 28, 2023. FTB did not receive a return from appellant within the prescribed period in the Demand. Therefore, FTB properly imposed the filing enforcement fee and appellant has not established a basis to abate the fee.

HOLDINGS

1. Appellant owes the annual LLC tax for the taxable year ending December 31, 2020.
2. The per-partner late filing penalty was not properly imposed.
3. Appellant has not established a basis to abate the demand penalty.
4. Appellant has not established a basis to abate the filing enforcement fee.

DISPOSITION

FTB's action is modified to remove the per-partner late filing penalty but is otherwise sustained.

Signed by:



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Veronica I. Long
Administrative Law Judge

We concur:

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Steven Kim
Administrative Law Judge

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Erica Parker
Hearing Officer

Date Issued: 11/14/2025