



3. On August 3, 2023, appellant untimely filed a 2019 Partnership Return of Income (Form 565) reporting 11 partners,<sup>1</sup> total payments of \$0, and a total amount due of \$0.
4. Respondent processed appellant's return as filed and imposed a per-partner late filing penalty of \$2,376. Respondent issued appellant a Notice of Balance Due. Appellant did not pay the balance due by the due date. Subsequently, respondent issued appellant a Past Due Notice, then a Final Notice Before Levy.
5. On November 26, 2024, appellant submitted a letter to respondent requesting abatement of the per-partner late filing penalty, which respondent treated as an informal claim for refund.
6. On February 3, 2025, appellant submitted payment of \$2,426.96 for the per-partner late filing penalty plus applicable interest, satisfying the balance due and perfecting appellant's claim for refund.
7. Respondent denied appellant's claim for refund.
8. Appellant timely filed this 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 Secretary of State is required to 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).) For the 2019 tax year, however, the due date for an LLC classified as a partnership to timely file a return was postponed to July 15, 2020.<sup>2</sup> In addition, California provides for an automatic six-month extension to file a return if the return is filed within six months of the original due date, which was September 15, 2020. (R&TC, § 18567; Cal. Code Regs., tit. 18, § 18567(a).) However, if the return is not filed within six months of the original due date, no extension is allowed. (Cal. Code Regs., tit. 18, § 18567(a); see also *Appeal of Bannon*, 2023-OTA-096P.) Appellant untimely filed its return on August 3, 2023.

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. 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,

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<sup>1</sup> Owners of an LLC are identified as "members." Because appellant filed a Form 565 and is classified as a partnership for income tax purposes, we refer to appellant's members as "partners."

<sup>2</sup> Due to COVID-19, respondent postponed the due date to file and pay taxes for the 2019 tax year to July 15, 2020. (See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2020-3-state-postpones-tax-deadlines-until-july-15-due-to-the-covid-19-pandemic.html>.)

§ 19172(b).) Appellant reported that it had 11 partners during the 2019 tax year, and it filed its return more than 12 months past the filing due date. Therefore, respondent properly imposed and calculated the per-partner late filing penalty of \$2,376 ( $\$18 \times 11 \text{ partners} \times 12 \text{ months} = \$2,376$ ).

The per-partner late filing penalty may be abated if it is established that the failure to timely file the return 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, LLC*, 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 the imposition or computation of the per-partner late filing penalty. Instead, appellant makes reasonable cause type arguments in support of its contention that the penalty should be abated. Specifically, appellant argues that 2019 was the first tax year that it received passthrough California income from its investment in another LLC, and that it did not receive the Schedule K-1 reporting this California income until September 2020, after the deadline for filing a California extension had passed.

Here, appellant asserts it did not know it had any California income until it received a Schedule K-1 in September 2020. However, taxpayers have an obligation to timely file returns with the best available information, and to then subsequently file an amended return if necessary. (*Appeal of Xie*, 2018-OTA-076P.) Difficulty in obtaining information does not constitute reasonable cause for the late filing of a return. (*Ibid.*) Even if the taxpayer is unaware of a filing requirement, ignorance of the law is not an excuse for failing to timely file a return. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) Appellant has not provided any documentation showing efforts made, if any, to obtain the Schedule K-1 information prior to the filing deadline. Moreover, appellant did not file its return until August 3, 2023, nearly three years after it purports to have received the Schedule K-1. A taxpayer exercising ordinary business care and prudence would have taken steps to determine its taxable income before the filing deadline and to ensure timely filing of its return as soon as possible after learning it earned California income. (See *Appeal of Moren*, 2019-OTA-176P.) Based on the foregoing, appellant has not demonstrated reasonable cause to abate the per-partner late filing penalty.

HOLDING

Appellant has not established reasonable cause to abate the per-partner late filing penalty for the 2019 tax year imposed under R&TC section 19172.

DISPOSITION

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

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*Steven Kim*  
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Steven Kim  
Administrative Law Judge

Date Issued: 10/28/2025