

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
DOWNES INVESTMENTS, LLC) OTA Case No. 241218254
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OPINION

Representing the Parties:

For Appellant: Graham Applebaum, Representative

For Respondent: Paige Chang, Attorney

H. FAMULARO, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Downs Investments, LLC (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$7,257.84, and applicable interest, for the 2022 tax year.

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).

ISSUES

1. Whether appellant has established reasonable cause to abate the late-payment penalty.
2. Whether appellant has established a legal basis to abate interest.

FACTUAL FINDINGS

1. On June 13, 2022, appellant, a California limited liability company (LLC), paid its applicable LLC fee of \$6,000 and the first installment of its pass-through entity elective tax (PTET) of \$58,098 for the 2022 tax year.¹

¹ For the 2022 tax year, appellant’s LLC fee and the first installment of its PTET were due on June 15, 2022. (R&TC, §§ 17942(d)(1), 19904(a)(2)(A).)

2. On June 13, 2022, appellant untimely paid the annual LLC tax of \$800 for the 2022 tax year.²
3. On May 2, 2023, appellant timely filed its 2022 California Form 568, Liability Company Return of Income, reporting an LLC fee of \$6,000, an annual LLC tax of \$800, a PTET of \$133,991, total taxes and fees of \$140,791, penalties and interest of \$1,343, total payments of \$134,791, and a total amount due of \$7,343.
4. On April 23, 2024, respondent sent appellant a Return Information Notice that notified appellant it had a tax balance due for the 2022 tax year, which included appellant's remaining PTET, a late-payment penalty, and applicable interest.
5. On July 30, 2024, respondent sent appellant a Limited Liability Company Past Due Notice.
6. On that same date, appellant paid its balance due of \$87,258.29 for the 2022 tax year, comprised of the following: (1) appellant's untimely payment of its remaining PTET of \$75,893;³ (2) a late-payment penalty of \$7,257.84; and (3) accrued interest of \$4,107.45.
7. On August 15, 2024, appellant submitted a claim for refund for the late-payment penalty.
8. On November 18, 2024, respondent sent appellant a denial letter that denied appellant's claim for refund.
9. This timely appeal followed.

DISCUSSION

Issue 1: Whether appellant has established reasonable cause to abate the late-payment penalty.

R&TC section 19132(a)(1)(A) imposes a penalty when a taxpayer fails to pay the amount shown as due on the return by the date prescribed for the payment unless the taxpayer establishes that the late filing was due to reasonable cause and not willful neglect. To establish reasonable cause for the late payment of tax, the taxpayer must show that the failure to make a timely payment of the proper amount of tax occurred despite the exercise of ordinary business care and prudence. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.) A strong, and often determinative, factor in determining reasonable cause and good faith is whether the

² For the 2022 tax year, appellant's annual LLC tax was due on April 15, 2022. (R&TC, § 17941(c).)

³ While R&TC section 19904(a)(2)(B) requires the balance of the PTET to be paid on or before the due date of a taxpayer's return, the due date of appellant's return was postponed due to the 2023 California winter storms to November 16, 2023. (See <https://www.ftb.ca.gov/file/when-to-file/california-severe-winter-storms.html>; see also *Appeal of Pomrehn*, 2025-OTA-269P.)

taxpayer has access to sufficient information upon which to base a reasonable estimate of their tax liability. (*Appeal of Moren*, 2019-OTA-176P.) A taxpayer must establish that they could not have acquired the information necessary to make an estimate of their tax liability. (*Ibid.*) An assertion that records were difficult to obtain without any substantiation of efforts made to retrieve those records or otherwise showing that they were unobtainable is not sufficient to show reasonable cause. (*Ibid.*)

Appellant does not dispute that the late-payment penalty for the 2022 tax year was properly imposed or computed. Rather, appellant contends it has established reasonable cause to abate the late-payment penalty. Appellant asserts that there were significant changes in its personnel administration and a related trust, including personnel responsible for tax compliance and financial management, which resulted in miscommunication and caused appellant's incoming personnel administration to mistakenly believe that the outgoing personnel administration had timely paid appellant's remaining PTET for the 2022 tax year.

Appellant has not established that it did not have the necessary information to reconcile its tax payments, determine its tax obligation, and timely remit payment for its remaining PTET for the 2022 tax year. (See *Appeal of Moren*, *supra.*) Appellant's oversight resulting from its personnel change does not, by itself, constitute reasonable cause. (*Ibid.*) Furthermore, to the extent that appellant's argument can be construed as reliance on its personnel to timely pay its remaining PTET, such reliance does not constitute reasonable cause because appellant relied on its personnel to perform clerical duties rather than to provide substantive tax advice. (See *Appeal of Summit Hosting LLC*, 2021-OTA-216P.) Accordingly, appellant has not met its burden to establish reasonable cause to abate the late-payment penalty for the 2022 tax year.

Issue 2: Whether appellant has established a legal basis to abate interest.

If any amount of the tax is not paid by the due date, interest is required to be imposed from the due date until the date the taxes are paid. (R&TC, § 19101(a).) Interest is not a penalty but is compensation for the taxpayer's use of money which should have been paid to the state. (*Appeal of Summit Hosting LLC*, *supra.*) Imposition of interest is mandatory, and it can only be abated in certain limited situations when authorized by law. (R&TC, § 19101(a); *Appeal of Summit Hosting LLC*, *supra.*) There is no reasonable cause exception to the imposition of interest. (*Appeal of Summit Hosting LLC*, *supra.*) To obtain relief from interest, appellant must qualify under R&TC section 19104 or 21012; however, based on the evidence


and appellant’s arguments, none of these statutory provisions apply.⁴ Thus, appellant has not established any basis for interest abatement for the 2022 tax year.

HOLDINGS


1. Appellant has not established reasonable cause to abate the late-payment penalty.
2. Appellant has not established a legal basis to abate interest.

DISPOSITION

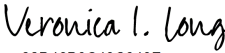
Respondent’s action denying appellant’s claim for refund is sustained.

Signed by:

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 Hans Famularo
 Administrative Law Judge

We concur:
 Signed by:

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 Seth Elsom
 Hearing Officer

Signed by:

 32D46B0C49C949F...

 Veronica I. Long
 Administrative Law Judge

Date Issued: 2/5/2026

⁴ Pursuant to R&TC section 19104, respondent is authorized to abate or refund interest if there has been an unreasonable error or delay in the performance of a ministerial or managerial act by an employee of respondent. Here, appellant does not assert any such errors or delays occurred. OTA also notes that relief pursuant to R&TC section 21012 is not relevant here because respondent did not provide appellant with any written advice.