

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
FERUS NATURAL GAS FUELS LP) OTA Case No. 240516075
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OPINION

Representing the Parties:

For Appellant: Rachel L. Cowsert, Representative

For Respondent: Sarah J. Fassett, Attorney

For Office of Tax Appeals: Evan Owens, Graduate Student Assistant

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Ferus Natural Gas Fuels LP (appellant) appeals actions by respondent Franchise Tax Board (FTB) denying appellant’s claims for refund of \$6,623.07 for the 2015 tax year, \$6,676.05 for the 2016 tax year, and \$7,418.01 for the 2017 tax year.¹

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 filing penalties.
2. Whether appellant is entitled to interest abatement.

FACTUAL FINDINGS

1. Appellant is a Texas-based limited partnership.
2. On August 26, 2019, appellant untimely filed California Partnership Returns of Income (Forms 565) for the 2015, 2016, and 2017 tax years (Years at Issue). Appellant reported

¹ For the 2015, 2016, and 2017 tax years, appellant requested a refund of the per-partner late filing penalties under R&TC section 19172, the late filing penalties under R&TC section 19131, and applicable interest.

that it began doing business in California on October 16, 2015, and it owed the annual tax of \$800 for the Years at Issue. Appellant also reported 24 partners for the 2015 and 2016 tax years, and 27 partners for the 2017 tax year. On August 26, 2019, appellant paid the annual tax of \$800 for the Years at Issue.

3. FTB processed Forms 565 for the Years at Issue, imposed late filing penalties, and assessed applicable interest.² FTB later sent collection notices related to the balances due for the Years at Issue.
4. On July 2, 2022, and November 27, 2023, FTB received correspondence from appellant arguing that the penalties should be abated for reasonable cause.
5. On February 8, 2024, appellant made payments which satisfied the balances due for each Year at Issue.
6. On March 1, 2024, appellant filed claims for refund for each Year at Issue.
7. On March 26, 2024, FTB denied appellant's claims for refund for each Year at Issue.
8. Appellant timely filed this appeal with OTA.

DISCUSSION

Issue 1: Whether appellant has established reasonable cause to abate the late filing penalties.

Every limited partnership doing business in California and subject to the annual tax, that files a certificate of limited partnership with the California Secretary of State (SOS), or, for foreign limited partnerships, registers with the California SOS, 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(a)(2), 17935(b)(1).) R&TC section 19172(a) imposes a per-partner late filing penalty when a partnership fails to file a return by the date prescribed for filing the return. R&TC section 19131 imposes a late filing penalty when a taxpayer fails to file a return on or before the due date. When FTB imposes a penalty, the law presumes that the penalty was imposed correctly, and the burden of proof rests with the taxpayer to show that reasonable cause exists to abate the penalty. (*Appeal of Xie*, 2018-OTA-076P.)

Appellant's Forms 565 for the Years at Issue were due on March 15, 2016, March 15, 2017, and March 15, 2018, respectively. It is undisputed that appellant failed to file Forms 565 for the Years at Issue by the respective deadlines, and accordingly, FTB properly imposed the late filing penalties.

² For each of the 2015 and 2016 tax years, FTB imposed per-partner late filing penalties of \$5,184. For the 2017 tax year, FTB imposed a per-partner late filing penalty of \$5,832. FTB also imposed late filing penalties of \$200 under R&TC section 19131 for each Year at Issue.

Appellant asserts that the penalties should be abated due to reasonable cause. Specifically, appellant claims that it registered with the California SOS in 2015, due to a possible business deal which never came to fruition, and thereafter failed to cancel its registration. However, appellant claims that it has never conducted business in California and has never had sales or resident partners in California. In 2019, appellant's personnel discovered that appellant was registered in California for the Years at Issue but had not filed any returns. Appellant claims its personnel relied on a tax preparation firm to prepare Forms 565 for the Years at Issue.³ Appellant's personnel believed that the penalty assessments could be disregarded. Later, newly-hired personnel discovered and paid the balances due. Appellant asserts that upheaval in management and personnel turnover, along with the failures of the tax preparation firm, contributed to the delay in filing Forms 565 for the Years at Issue, and that it complied with its California filing obligations after discovering the delinquencies.

Both late filing penalties will be abated if the taxpayer establishes reasonable cause. (R&TC, §§ 19172(a)(2), 19131(a).) 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.) Each taxpayer has a non-delegable obligation to file a tax return by the due date. (*Ibid.*) A taxpayer's reliance on a tax advisor must involve reliance on substantive tax advice, such as whether a liability exists, and not simply on clerical duties. (*Ibid.*; *Appeal of Mauritzson*, 2021-OTA-198P.)

Appellant asserts that it was never doing business in California, and never had sales or resident partners in California. However, appellant filed Forms 565 for each Year at Issue which reported that appellant: (1) was doing business in California beginning on October 16, 2015; (2) was a limited partnership required to pay the annual tax; (3) owed the annual tax of \$800 for each Year at Issue; and (4) that it had over twenty partners for each Year at Issue. The burden of proof rests with the taxpayer to show that reasonable causes exists to abate the penalty. (*Appeal of Xie, supra.*) On appeal, appellant provides no information to show that it lacked any

³ Appellant asserts that the tax preparer was supposed to prepare Forms 565 for the Years at Issue under California's Voluntary Disclosure Program (VDP), R&TC sections 19191 et seq. VDP allows qualified entities and their qualified partners with tax liabilities to enter into Voluntary Disclosure Agreements (VDAs) to file returns and pay tax in exchange for FTB's agreement to limit its authority to assess or propose to assess tax, or impose penalties, for a six-taxable-year period preceding the date of the VDA, and to waive certain penalties for the VDA period. (See, e.g., R&TC, § 19191(a), (d)(1).) However, the record in this appeal does not show that appellant completed a VDA or filed under the VDP. Moreover, this assertion does not explain why the Forms 565 were untimely filed.

California activity or resident partners. Further, appellant provides no explanation for why it filed Forms 565 for the Years at Issue, when its personnel believed that it had no filing obligation.

Appellant argues that Forms 565 for the Years at Issue were not timely filed because its tax preparer failed to advise it of relevant due dates and because of upheaval in management and personnel turnover. However, the law is clear: the fact that a tax preparer was expected to attend to a matter does not relieve a taxpayer of the duty to comply with the statute, and an agent's failure to file a tax return cannot constitute reasonable cause for the taxpayer. (*Appeal of Fisher*, 2022-OTA-337P.) Moreover, appellant provides no evidence of any specific advice from its tax preparer upon which it could reasonably rely. (See *Appeal of Xie, supra*.) Thus, appellant has not established what efforts, if any, it undertook to timely file and pay before 2019.

Moreover, the failure to file a return caused by an oversight is not reasonable cause. (*Appeal of Auburn Old Town Gallery, LLC*, 2019-OTA-319P.) Appellant fails to explain why Forms 565 for each Year at Issue were not filed until over a year (or more) after each respective due date. Thus, appellant has not established reasonable cause to abate the late filing penalties based on its tax preparer's failures, upheaval in management, and personnel turnover.

Appellant asserts that it tried to comply with its California filing obligations once it discovered the delinquencies. However, because appellant lacks reasonable cause between the respective due dates and filing dates of the Forms 565, OTA cannot abate the penalties.

Appellant also argues that the assessment of the per-partner late filing penalties "results in a grossly disproportionate penalty" six times greater than the tax due, which it asserts violates Article I, section 17 of the California Constitution. Appellant cites *People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.* (2005) 37 Cal. 4th 707 (*Lockyer*).

As relevant here, where FTB mails a notice of action denying perfected claims for refund, OTA's jurisdiction is limited to hearing and deciding appeals. (Cal. Code Regs., tit. 18, § 30103(a).) An administrative agency's authority to act is of limited jurisdiction and it "has no powers except such as the law of its creation has given it." (*Appeal of Moy*, 2019-OTA-057P; *Ferdig v. State Personnel Board* (1969) 71 Cal.2d 96, 105.) OTA has no jurisdiction over (1) "[w]hether a California statute is invalid or unenforceable under the United States or California Constitutions, unless a federal or California appellate court has already made such a determination," or (2) "[w]hether the appellant is entitled to a remedy for an Agency's actual or alleged violation of any substantive or procedural right to due process under the law, unless the violation affects the adequacy of a notice, the validity of an action from which a timely appeal was made, or the amount at issue in the appeal." (Cal. Code Regs., tit. 18, § 30104.)

Lockyer, on which appellant relies, concerns California Health and Safety Code section 118950. (See *Lockyer, supra*, 37 Cal. 4th at p. 714.) *Lockyer* makes no determination on the validity of R&TC section 19172, and OTA is aware of no appellate authority holding that R&TC section 19172 is unconstitutional. Therefore, OTA has no jurisdiction over any constitutional or substantive due process claims. (See Cal. Code Regs., tit. 18, § 30104(b), (d).) Appellant does not claim that the penalty affected the adequacy or validity of FTB's notice of action, from which it timely appealed, nor the amount at issue on appeal. Thus, OTA has no jurisdiction to review FTB's actions or failures to act. (See Cal. Code Regs., tit. 18, § 30104(d).)

Issue 2: Whether appellant is entitled to interest abatement.

The imposition of interest is mandatory and accrues on a tax deficiency regardless of the reason for the underpayment. (R&TC, § 19101(a); *Appeal of Balch*, 2018-OTA-159P.) Interest is not a penalty; it is compensation for the use of money. (*Appeal of Balch, supra*.) There is no reasonable cause exception to the imposition of interest. (*Appeal of Moy, supra*.)

To obtain interest relief, appellant must qualify under R&TC section 19104 (pertaining to unreasonable error or delay by FTB in the performance of a ministerial or managerial act), or section 21012 (pertaining to reasonable reliance on FTB's written advice). Appellant does not allege, and the record does not reflect, that either waiver provision is applicable here. Therefore, there is no basis to abate interest.

HOLDINGS

1. Appellant has not established reasonable cause to abate the late filing penalties.
2. Appellant is not entitled to interest abatement.

DISPOSITION

FTB's actions denying appellant's claims for refund are sustained.

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Asaf Kletter
Administrative Law Judge

We concur:

Signed by:



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Suzanne B. Brown
Administrative Law Judge

Signed by:



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Seth Elsom
Hearing Officer

Date Issued: 2/4/2026