

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Consolidated Appeals of: ) OTA Case Nos. 240315532; 240315533  
HRA HIGHLANDER LLC AND )  
HRA WOODLAKE VILLAGE LLC )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: Samuel D. Brotman, Attorney  
Sahar Bijan, Attorney  
Rojin Bijan, Representative

For Respondent: Leoangelo C. Cristobal, Attorney  
Alisa Pinarbasi, Attorney

S. ELSOM, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19324, HRA Highlander LLC (appellant 1), and HRA Woodlake Village LLC (appellant 2) (collectively, appellants) appeal actions by the Franchise Tax Board (respondent) denying appellant 1’s claims for refund of the per-partner late filing penalties of \$48,384 for the 2019 tax year, and \$48,384 for the 2020 tax year; and appellant 2’s claims for refund of the per-partner late filing penalties of \$31,320 for the 2019 tax year, and \$32,184 for the 2020 tax year.<sup>12</sup>

Office of Tax Appeals (OTA) Panel Members Seth Elsom, Steven Kim, and Asaf Kletter held a virtual oral hearing for this matter on November 20, 2025. At the conclusion of the hearing, the record was closed, and this matter was submitted for an opinion pursuant to California Code of Regulations, title 18, section 30209(b).

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<sup>1</sup> Appellants’ requests for appeal state amounts at issue which include interest. While Respondent’s opening brief addressed interest abatement, appellants do not raise interest as an issue on appeal. Therefore, OTA does not address interest as in issue in this Opinion.

<sup>2</sup> Respondent’s notices to appellant 1 for the 2019 and 2020 tax years each included an electronic payment (e-pay) penalty of \$1,179 imposed under R&TC section 19011.5. On appeal, respondent concedes the e-pay penalty. As such, at the conclusion of this appeal, respondent agrees to refund the e-pay penalties to appellant 1, plus applicable interest.

ISSUE

Whether appellants have established reasonable cause to abate the per-partner late filing penalties.

FACTUAL FINDINGS<sup>3</sup>Facts Relating to Appellant 1

1. Appellant 1 was an LLC treated as a partnership for California income tax purposes. Appellant 1 did not timely file California Forms 568, Limited Liability Company (LLC) Returns of Income (Returns) for the 2019 and 2020 tax years.
2. On July 26, 2022, appellant 1 e-filed Returns for the 2019 and 2020 tax years. Each Return reported 224 members.
3. Respondent accepted the Returns as filed, and subsequently issued notices to appellant 1, imposing per partner-late payment penalties of \$48,384 for each of the 2019 and 2020 tax years.
4. Appellant 1 paid the balance due for each tax year and filed forms FTB 2924, Reasonable Cause – Business Entity Claim for Refund, which requested abatement of the per partner late filing penalties. In its claims for refund, appellant 1 provided a letter from its tax preparer, stating, “[i]nitially attempts were made to e[-]file [the 2019 and 2020 Returns] with California, but the [R]eturns were rejected due to errors. We spent time trying to correct and resolve these issues, but could not get the [R]eturns to be accepted. It was our belief the penalties could be abated, since the tax had been fully paid and [Schedule] K-1s had been delivered to [the] members – and no harm had been done to the state.”
5. Respondent subsequently sent appellant 1 Claim for Refund Denied letters.
6. This timely appeal followed. On appeal, appellant 1 provides the following to support reasonable cause for the late filing of its returns: (1) a letter dated March 10, 2021, from appellant’s tax preparer to appellant 1, discussing filing instructions for an unspecified tax year; (2) filing instructions, from appellant 1’s tax preparer to appellant 1, for the 2020 Return and 2020 federal return;<sup>4</sup> (3) California e-file authorization forms for the 2019 and 2020 tax years; (4) schedule of minimum tax and LLC fee payments for the

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<sup>3</sup> This Opinion addresses the consolidated appeals for appellant 1 and appellant 2. Some facts are repeated to the extent that they apply to both appellants.

<sup>4</sup> At the oral hearing, appellant 1 confirmed that HRA Opportunity Fund I, LLC is the legal registered name for the entity doing business as HRA Highlander, LLC.

2020 tax year; and (5) emails from appellant 1's property manager and tax preparer detailing their respective Covid-19 protocols.

#### Facts Relating to Appellant 2

7. Appellant 2 is an LLC treated as a partnership for California income tax purposes. Appellant 2 did not timely file Returns for the 2019 and 2020 tax years.
8. On July 8, 2022, and July 25, 2022, appellant 2 e-filed Returns for the 2019 and 2020 tax years, respectively. The 2019 Return reported 148 members.<sup>5</sup> The 2020 Return reported 149 members.
9. Respondent accepted the 2019 and 2020 Returns as filed, and subsequently issued two notices to appellant 2, imposing per-partner late payment penalties of \$31,320 for the 2019 tax year and \$32,184 for the 2020 tax year.
10. Appellant 2 paid the balance due for each tax year and subsequently filed forms FTB 2924, Reasonable Cause – Business Entity Claim for Refund, which requested abatement of the per partner late filing penalties. In its claims for refund, appellant 2 provided a letter from its tax preparer identical to the letter provided by appellant 1 in its claims for refund, to explain the cause for the late filing and the tax preparer's belief that any penalties associated with the late filing could be abated.
11. Respondent subsequently issued appellant 2 Claim for Refund Denied letters.
12. This timely appeal followed. On appeal, appellant 2 provides the following to support reasonable cause for late filing the Returns: (1) a letter dated March 10, 2020, issued from appellant's tax preparer discussing filing instructions for an unspecified tax year; (2) filing instructions issued by appellant 2's tax preparer for the 2019 and 2020 Returns and 2019 and 2020 federal returns; (3) a California e-file authorization form for the 2020 tax year; (4) schedule of minimum tax and LLC fee payments for the 2020 tax year; and (5) emails from appellant 2's property manager and tax preparer detailing their respective COVID-19 protocols.<sup>6</sup>

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<sup>5</sup> On August 15, 2022, appellant 2 amended the 2019 Return to report 145 members.

<sup>6</sup> For the tax years at issue, appellant 1 and appellant 2 employed the same property manager and the same tax preparer.

## DISCUSSION

R&TC section 19172(a) imposes a per-partner late filing penalty when an entity classified as a partnership fails to file a return at the time prescribed for the filing, unless it is shown that the failure is due to reasonable cause. When respondent imposes a penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.)

For penalty abatement purposes, reasonable cause exists when the taxpayer acted as an ordinarily intelligent and prudent businessperson would have acted under similar circumstances. (See *Appeal of Fisher*, 2022-OTA-337P (*Fisher*).) 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.*) The burden of proof is on the taxpayer to show that reasonable cause exists to support an abatement of the penalty. (*Appeal of Xie, supra.*) To overcome the presumption of correctness attached to the penalty, appellants must provide credible and competent evidence supporting a claim of reasonable cause; otherwise, the penalty cannot be abated. (*Ibid.*)

Here, appellants do not dispute that they untimely filed their 2019<sup>7</sup> and 2020 Returns and that respondent correctly imposed the per-partner late filing penalties. Instead, appellants assert that there was reasonable cause for the late filings. Appellants argue that they relied on their tax preparer to file the Returns, and that they timely provided all records and e-file authorization forms to the tax preparer. However, it is well established that each taxpayer has a personal, non-delegable obligation to file a tax return by the due date, and therefore, reliance on an agent to perform this act does not constitute reasonable cause to abate a late filing penalty. (*Fisher, supra.*) Thus, appellants were required to personally verify the filing of their returns after delegating the filing obligation to the tax preparer. (*Ibid.*)

In *Fisher*, the taxpayers hired a professional accounting firm to file California and federal tax returns. An associate of the firm informed the taxpayers that the California return had been filed, despite the fact that the firm's accounting software did not issue a confirmation or rejection notice to the taxpayers. The taxpayers took no further action to verify the filing of their return and were informed by respondent over two years later that it had not been filed. Respondent subsequently imposed a late filing penalty. In sustaining respondent's imposition of the late filing penalty, OTA held that, "the exercise of ordinary business care and prudence required appellants to do more than merely perform and/or delegate the tasks necessary to

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<sup>7</sup> For the 2019 tax year, due to COVID-19, respondent postponed the filing and payment due date 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>.

timely file the return. (*Fisher, supra.*) It also required appellants to personally verify the return had been successfully transmitted, and when it had not been, to take appropriate corrective action. (*Ibid.*)

Here, appellants assert that they made phone calls and emailed the tax preparer to verify the filing of their Returns but provide only an email between appellants' property manager and the tax preparer to support this assertion. In the email, the tax preparer indicates that it was in the process of preparing various entity returns (including appellant 2's) for an unspecified tax year, and expects them to be "delivered" to the property manager within several days, but does not state it completed the filing. Appellants provide no evidence of their efforts to request confirmation of the tax preparer's filing of the Returns, such as a confirmation email that the Returns were filed, or any other steps taken to personally verify the timely filing of the Returns. Therefore, appellants have not met their burden of proof to establish that they took steps to personally verify that their Returns had been successfully transmitted. (*Appeal of Xie, supra; Fisher, supra.*)

Appellants distinguish their appeal from *Fisher*, because the taxpayers in *Fisher* filed during a "normal" tax year, whereas appellants here filed during the COVID-19 pandemic. Although appellants credibly testified that the COVID-19 pandemic caused changes to the preparer's personnel and disrupted appellants' business operations, appellants do not explain or provide information to demonstrate how the COVID-19 pandemic specifically prevented them from verifying that their returns had been timely filed. Additionally, in a letter to respondent, the tax preparer states that it experienced difficulties e-filing the returns, and that it believed any penalties could be abated since "tax [due to California] had been fully paid and [Schedule] K-1s had been delivered to the members – and no harm had been done to the state", and the filing was then "forgotten until July of 2022." Thus, the record in this appeal does not demonstrate

that the Covid-19 pandemic caused the late filing of, or prevented appellants from taking other steps to verify, the timely filing of their Returns.<sup>8</sup>

Based on the foregoing, appellants have not demonstrated that they acted as an ordinarily intelligent and prudent businessperson would have acted under similar circumstances. (See *Appeal of Xie, supra.*) Accordingly, appellants have not met their burden of proof to establish reasonable cause for the late filing of their returns. (*Ibid.*)

Appellants argue that the penalties should be abated because they timely paid their taxes. However, the penalties imposed are late filing penalties, and the timely payment of taxes is not relevant to the determination of whether the late filing penalties can be abated.

Appellants also argue that imposing the penalties would not serve the California's policy of fostering compliance. However, 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.*) OTA has authority to review abatement of the late filing penalty only where the California Legislature has specifically granted review authority, such as the reasonable cause exception stated in R&TC section 19172. R&TC section 19172 does not grant OTA authority to abate the per-partner late filing penalty on the grounds of fairness or lack of harm to respondent. Thus, OTA has no jurisdiction to apply that criteria to determine whether the per partner late filing penalty should be abated.

Finally, appellants request one-time abatement of the penalties if OTA does not find reasonable cause to abate the penalties. While the IRS's First-Time Abate program allows a one-time abatement of a timeliness penalty for the 2019 and 2020 tax years, California has adopted a similar program only for tax years beginning on or after January 1, 2022. (See *Appeal of Porreca, 2018-OTA-095P*; R&TC, § 19132.5.) Because the 2019 and 2020 tax years are at issue here, a one-time abatement of the per partner late filing penalty is unavailable to appellants.

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<sup>8</sup> Appellants also cite the nonprecedential cases of the *Appeal of Tupper, 2024--OTA--187SCP (Tupper)* and the *Appeal of Smeets, 2024-OTA-148 (Smeets)*. Since these Opinions are nonprecedential, they cannot be relied upon as binding by the parties or OTA in an appeal. (Cal. Code Regs., tit. 18, §§ 30502(b), 30501(h).) Though a nonprecedential Opinion has no precedential weight, it nevertheless may be found to be persuasive, even if there is no unanimous decision. (*Appeals of F.A.R. Investments, Inc. and Arciero & Sons, Inc. 2022.OTA-395P.*)


*Tupper* involved a late payment penalty and provides no persuasive value here. In *Smeets*, OTA held in relevant part that the appellant had not met her burden to establish that events related to the COVID-19 pandemic prevented her from timely filing her return. Appellants argue their appeal is distinguishable from *Smeets* because they have provided actual evidence establishing that the COVID-19 pandemic prevented the timely filing of their returns. However, OTA finds that appellant has not demonstrated that the COVID-19 pandemic caused the late filings. As a result, OTA finds these arguments unpersuasive.

HOLDING


Appellants have not established reasonable cause to abate the per-partner late filing penalties.


DISPOSITION

On appeal, respondent concedes to refund the e-pay penalty of \$1,179 for the 2019 and 2020 tax years. Respondent's actions denying appellants' claims for refund are otherwise sustained.

Signed by:  
  
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Seth Elsom  
Hearing Officer

We concur:

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Steven Kim  
Administrative Law Judge

DocuSigned by:  
  
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Asaf Kletter  
Administrative Law Judge

Date Issued: 2/12/2026