2026-OTA-277
Nonprecedential

**OFFICE OF TAX APPEALS**

**STATE OF CALIFORNIA**

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| In the Matter of the Appeal of: **THE ART KART CO LLC** | OTA Case No. 241218193 |

**OPINION**

Representing the Parties:

For Appellant: Michelle McBeth, Co-Owner
Maia Drogin-Carter, Co-Owner

For Respondent: Nicolas McMurray, Graduate Legal Assistant

S. ELSOM, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) sections 19324 and 19331, The Art Kart Co LLC (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant's claim for refund of $1,028.43[1] 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 a California filing requirement and obligation to pay the annual LLC tax for the 2022 tax year.
2. Whether appellant has established reasonable cause for the late payment of tax.
3. Whether appellant has established a legal basis to abate interest.

[1] Appellant's appeal requests a refund of $1,028.43, which is the sum of the late payment penalty of $140, the annual LLC tax of $800, and interest of $88.43.

## FACTUAL FINDINGS

1. On September 27, 2021, appellant filed articles of organization as a California limited liability company (LLC) with the California Secretary of State (CA SOS). Appellant was treated as a partnership for California income tax purposes.
2. On November 12, 2022, appellant filed a Certificate of Cancellation – LLC Termination with the CA SOS, terminating the powers, rights, and privileges of the LLC to conduct business in California.
3. On March 2, 2023, appellant contacted respondent to request assistance in determining its filing obligations.
4. On June 14, 2023, appellant untimely filed a California Form 568, LLC Return of Income (Return) for the 2021[2] short year beginning September 27, 2021 and ending December 31, 2021, and the 2022 short year beginning January 1, 2022 and ending December 19, 2022. Appellant's 2021 Return did not indicate that it was a final return.
5. On April 24, 2024, respondent sent appellant an LLC-Return Information Notice, which assessed an annual LLC tax of $800, a late filing penalty of $140, and interest of $88.43, for a total balance due of $1,028.43 for the 2022 tax year.
6. On May 4, 2024, appellant paid the balance due and subsequently filed FTB form 2924, Reasonable Cause – Business Entity Claim for Refund, which requested a refund of the total balance due of $1,028.43.
7. Respondent denied appellant's claim for refund of the late payment penalty of $140. Respondent did not issue a notice denying a refund of the annual LLC tax and interest.
8. Appellant treated respondent's inaction with respect to the annual LLC tax and interest as a deemed denial and timely filed this appeal with OTA on December 3, 2024, for the claimed amount of $1,028.43.[3]

[2] The 2021 tax year is not at issue here. As discussed in footnote 5 below, OTA refers to that tax year as it relates to an annual LLC tax exemption under R&TC section 17947.

[3] Respondent accepted appellant's claim for refund of $1,028.43 on or about June 3, 2024. Because respondent has not issued a notice denying a refund of the perfected amount within six months, OTA has jurisdiction over the full amount. (R&TC, § 19331, Cal. Code Regs., tit. 18, § 30103(a)(4).)

## DISCUSSION

Issue 1: Whether appellant has a California filing requirement and obligation to pay the annual LLC tax for the 2022 tax year.

Every LLC that is classified as a partnership for California tax purposes that is doing business in California, organized in California, or registered with the CA SOS is required to file a return on or before the fifteenth day of the third month following the close of its taxable year. (R&TC, § 18633.5(a).) LLCs are required to pay an annual tax equal to the applicable amount specified in R&TC section 23153(d)[4] for the privilege of doing business in this state if any of three requirements are met: (1) the LLC is "doing business" in California as defined under R&TC section 23101;[5] (2) the LLC's articles of organization have been accepted by the CA SOS; or (3) a certificate of registration has been issued by the CA SOS. (R&TC, § 17941(a), (b)(1).) An LLC shall pay the annual LLC tax for each taxable year, or part thereof, until a certificate of cancellation of registration *or* of articles of organization is filed with the CA SOS. (R&TC, § 17941(b)(1).)[6]

On appeal, appellant asserts that it formed its business in September of 2021 and subsequently dissolved in December 2022. Appellant claims that it never hired any employees, made any money, or conducted any business. Appellant further asserts that it contacted respondent on March 2, 2023, to request filing advice, and claims that respondent advised appellant "to only file the amended 568 form for the year 2021" and that appellant was not required to pay the annual LLC tax. Based upon its reliance on respondent's advice, appellant believes that it should not be subject to the annual LLC tax and penalties.

Appellant filed articles of organization as a California LLC on September 27, 2021, with the CA SOS, which it accepted. An LLC is required to pay the annual LLC tax for each taxable

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[4] For the tax year at issue, the annual LLC tax was $800.

[5] R&TC section 23101(b)(1) provides that a taxpayer is "doing business" in California for a taxable year if the taxpayer is organized or commercially domiciled in this state.

[6] OTA notes that R&TC sections 17941(g), 17946, and 17947 provide exemptions from the LLC tax if certain criteria are met. R&TC section 17941(g) provides, in relevant part, that an LLC that organizes or registers with the CA SOS on or after January 1, 2021, and before January 1, 2024, is exempt from tax in its first taxable year, but that provision is inapplicable here because the 2022 tax year was not appellant's first taxable year. R&TC section 17946 provides that an LLC is exempt from tax if it did no business in this state during the year and its taxable year was 15 days or less, but that exemption does not apply here because appellant's tax year exceeded 15 days. R&TC section 17947(a)(1) exempts an LLC that files a timely final annual tax return for the preceding taxable year and that did no business in California after the end of the preceding taxable year, but it is inapplicable because appellant untimely filed its Return for the 2021 tax year, the preceding taxable year, and did mark the return as a final return.

year, or part thereof, until a certificate of cancellation is filed with the CA SOS, and to file a Return while registered with the CA SOS. (R&TC, §§ 17941(a), (b)(1); 18633.5(a).) On November 12, 2022, appellant filed the Certificate of Cancellation with the CA SOS to terminate the LLC. Therefore, appellant was required to pay the annual LLC tax and to file a Return for the 2022 tax year. Thus, it is unnecessary to determine whether appellant conducted any business during the 2022 tax year.

Appellant argues that it relied on respondent's advice that it was not required to pay the annual LLC tax, which implicates equitable estoppel. "Equitable estoppel is a judicial doctrine that 'precludes a party from denying [its] own acts or representations which induced another to act to [its] detriment.'" (*Hofstetter v. Commissioner* (1992) 98 T.C. 695, 700.) The four elements of equitable estoppel are: (1) the government agency must be shown to have been aware of the actual facts; (2) the government agency must be shown to have an incorrect or inaccurate representation to the relying party and intend that its inaccurate representation be acted upon by the relying party or have acted in such a way that the relying party had a right to believe that the representation was so intended; (3) the relying party must be shown to have been ignorant of the facts; and (4) the relying party must be shown to have detrimentally relied upon the representations or conduct of the government agency. (*Appeal of Sedillo*, 2018-OTA-101P.) The party asserting an estoppel bears the burden of proof and, thus, appellant must establish each of these four elements. (See *ibid.*)

Appellant has not shown detrimental reliance. Appellant had the obligation to pay the annual LLC tax for the 2022 tax year before it contacted respondent on March 2, 2023, when respondent purportedly told appellant that it did not have to pay the annual LLC tax. Moreover, respondent is not bound by the informal opinions of its employees on questions of taxability. (*Appeal of Western Colorprint* (78-SBE-071) 1978 WL 3544.) Thus, OTA finds that equitable estoppel is not applicable to this appeal.

<u>Issue 2: Whether appellant has established reasonable cause for the late payment of tax.</u>

R&TC section 19132(a)(1)(A) imposes a late payment penalty when a taxpayer fails to pay the amount shown as due on the return by the date prescribed for the payment. It provides that respondent shall impose a late payment penalty which is comprised of two parts: (1) five percent of the unpaid tax (underpayment penalty) and (2) one-half of one percent of the remaining tax, where greater than zero, for each additional month or fraction thereof for a maximum of 40 months (monthly penalty).

Appellant's annual LLC tax was due on April 15, 2022 (R&TC § 17941(c)), and appellant paid the annual LLC tax on May 4, 2024. Appellant does not argue that the late payment penalty was improperly calculated or imposed but instead asserts reasonable cause to abate the penalty under the same equitable estoppel argument for the annual LLC tax above.

The late payment penalty may be abated if the taxpayer can show that the failure to make a timely payment of tax was due to reasonable cause and not due to willful neglect. (R&TC, § 19132(a).) In the case where a taxpayer seeks 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 Triple Crown Baseball LLC*, 2019-OTA-025P.)

As stated above, OTA finds that the doctrine of equitable estoppel is inapplicable here. Even if appellant was unaware of the law requiring payment of the annual LLC fee, ignorance of the law does not establish reasonable cause for the failure to comply with statutory requirements. (*Appeal of Cremel and Koeppel,* 2021-OTA-222P.) Based on the foregoing, appellant has not established reasonable cause for its late payment of the annual LLC tax.

<u>Issue 3: Whether appellant has established a legal basis to abate interest.</u>

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.) There is no reasonable cause exception to the imposition of interest. (*Appeal of Patient Comfort Services, LLC*, 2021-OTA-300P). To obtain interest relief, appellant must qualify under either waiver provision of R&TC section 19104 (pertaining to unreasonable error or delay by respondent in the performance of a ministerial or managerial act), or R&TC section 21012 (pertaining to reasonable reliance on the written advice of respondent). (*Ibid*.) Appellant does not allege, and the record does not reflect that either waiver provision is applicable here. Therefore, OTA cannot abate interest.

## HOLDINGS

1. Appellant has a California filing requirement and obligation to pay the annual LLC tax for the 2022 tax year.
2. Appellant has not established reasonable cause for the late payment of tax.
3. Appellant has not established a legal basis to abate interest.

## DISPOSITION

Respondent's actions denying appellant's claim for refund are sustained.

Signed by:
Seth Elsom
C04CD432E3254FD...
Seth Elsom
Hearing Officer

We concur:

Signed by:
Kim Wilson
4E8E740EDB984CD...
Kim Wilson
Hearing Officer

DocuSigned by:
Erica Parker
6651E0AAC34B4F6...
Erica Parker
Hearing Officer

Date Issued: 4/2/2026