OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **BLACK SABBITCH LLC**	OTA Case No. 250218708

OPINION

Representing the Parties:

For Appellant: Melanie Makaiwi, Partner

For Respondent: John Ly, Attorney

For Office of Tax Appeals: Daniel Kim, Graduate Student Assistant

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Black Sabbitch LLC (appellant) appeals actions by respondent Franchise Tax Board (FTB) denying appellant's claims for refund of $874.04 for the 2021 tax year and $504 for the 2022 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).

ISSUE

Whether appellant demonstrated reasonable cause to abate the late filing penalties for the 2021 and 2022 tax years.

FACTUAL FINDINGS

1. Appellant is a Limited Liability Company (LLC) that first started business in California on January 1, 2020. For the appeal years, appellant had a maximum of four members.

[1] FTB agrees to abate the late payment penalty of $10.04 for the 2021 tax year at the conclusion of this appeal. Also, appellant does not specifically contest interest, and it is not discussed further.

2021 Tax Year

2. On June 6, 2024, FTB received appellant's untimely filed 2021 Form 568, LLC Return of Income. FTB processed the return and accepted it as filed.
3. FTB imposed a late filing penalty of $864 because appellant did not timely file its 2021 Form 568.
4. Appellant paid the late filing penalty.
5. Appellant submitted a claim for refund on September 15, 2024.

2022 Tax Year

6. On June 6, 2024, FTB received appellant's untimely filed 2022 Form 568. FTB processed the return and accepted it as filed.
7. FTB imposed a late filing penalty of $504 because appellant did not timely file its 2022 Form 568.
8. Appellant paid the late filing penalty.
9. Appellant submitted a claim for refund on November 1, 2024.

FTB's Denial and Subsequent Appeal

10. FTB denied appellant's claims for refund for the 2021 and 2022 tax years.
11. This timely appeal followed.

DISCUSSION

R&TC section 18633.5(a) provides that 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 California Secretary of State shall file its return on or before the fifteenth day of the third month following the close of its taxable year. Alternatively, the LLC may file its return on or before the automatic extended due date, which is six months after the original filing due date. (R&TC, § 18567; Cal. Code Regs., tit. 18, § 18567(a).) 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).)

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 unless it is shown that the failure was due to reasonable cause. 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, § 19172(b).) Here, FTB properly imposed and calculated the late filing penalties, which appellant does not dispute.[2]

The late filing penalty will be abated if it is established that the late filing was due to reasonable cause. (R&TC, § 19172(a)(2).) 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 *U.S. v. Boyle* (1985) 469 U.S. 241, 251 (*Boyle*), the U.S. Supreme Court stated that "one does not have to be a tax expert to know that tax returns have fixed filing dates and that taxes must be paid when they are due." Taxpayers who fail to acquaint themselves with the requirements of California tax law have not exercised ordinary business care and prudence. (*Appeal of Summit Hosting LLC*, 2021-OTA-216P.)

Appellant asserts that it was unaware of the requirement to file Forms 568 for the 2021 and 2022 tax years, that it acted in good faith, and that it discovered the requirement in 2024 when FTB issued the LLC Consolidated Return Information Notices. However, even if the taxpayer is unaware of a filing requirement, ignorance of the law is not an excuse for failing to file a timely return. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P). Taxpayers have a personal obligation to meet statutory deadlines. (*Boyle*, *supra*, 469 U.S at pp. 251-252.) Therefore, the late filing penalty cannot be abated.

[2] Appellant's original due date was March 15, 2022, for the 2021 tax year, and March 15, 2023, for the 2022 tax year. Appellant filed its 2021 and 2022 Forms 568 on June 6, 2024, over 12 months late for each respective tax year. FTB properly calculated the 2021 late filing penalty ($18 x 4 members x 12 months = $864). Due to the California winter storms, FTB postponed the due date for the 2022 tax year to November 16, 2023. (See https://www.ftb.ca.gov/file/when-to-file/california-severe-winter-storms.html.) Although appellant did not file by the postponed due date, FTB calculated the 2022 late filing penalty as only seven months late. ($18 x 4 members x 7 months = $504). As this error is in appellant's favor, OTA does not discuss it further.

HOLDING

Appellant has not established reasonable cause to abate the late filing penalties for the 2021 and 2022 tax years.

DISPOSITION

FTB agrees to refund appellant's late payment penalty of $10.04. In all other respects, FTB's actions denying appellant's claims for refund are sustained.

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Asaf Kletter
Administrative Law Judge

We concur:

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Teresa A. Stanley
Administrative Law Judge

Signed by:
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Hans Famularo
Administrative Law Judge

Date Issued: 5/13/2026