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OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **MAKE.WORK.SPACE.LLC**	)	OTA Case No. 250318936

OPINION

Representing the Parties:

For Appellant: Walter Craven, Member

For Respondent: Nicolas McMurray, Graduate Legal Assistant

For Office of Tax Appeals: Michelle Huh, Attorney

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Make.Work.Space.LLC (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant's claim for refund of $96 for the 2023 tax year. Pursuant to R&TC section 19331, appellant also appeals FTB's deemed denial of its claim for refund of $800 for the 2023 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 was subject to the annual limited liability company (LLC) tax.
2. Whether appellant has established reasonable cause for the late payment of tax.
3. Whether appellant is entitled to interest abatement.

FACTUAL FINDINGS

1. Appellant, a single-member LLC (SMLLC) disregarded for income tax purposes, was organized in California in 2019.

2. On October 15, 2024, appellant filed a 2023 Form 568, LLC Return of Income, which it designated as a final return. The Form 568 reported zero income, an annual LLC tax of $800, and a payment of $800, for zero tax due.
3. On January 14, 2025, appellant filed a Certificate of Dissolution with the California Secretary of State (SOS).
4. Because FTB had no record of payment of the annual LLC tax, FTB imposed a late payment penalty of $96 plus applicable interest.
5. Appellant paid the balance due and filed a claim for refund for the annual LLC tax, the late payment penalty, and interest.
6. On February 13, 2025, FTB issued a Notice of Action (NOA) denying appellant's claim for the late payment penalty and interest.
7. Appellant timely appealed the NOA. Appellant also deemed its claim for refund for the annual LLC tax denied and appealed to OTA.[1]

DISCUSSION

Issue 1: Whether appellant was subject to the annual LLC tax.

Every LLC "doing business" in California, as defined in R&TC section 23101, is required to pay an annual LLC tax equal to the applicable amount specified in R&TC section 23153(d) for the privilege of doing business in California. (R&TC, § 17941(a).) The annual LLC tax was $800 for the 2023 tax year. (R&TC, § 23153(d)(1).) Additionally, R&TC section 17941(b)(1) provides that an LLC is required to pay the annual LLC tax if its Articles of Organization have been accepted by the California SOS, or if a Certificate of Registration has been issued by the SOS. The LLC is liable for 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 on behalf of the LLC with the SOS. (R&TC, § 17941(b)(1).)[2] If a taxpayer files a final return with FTB, FTB shall notify the taxpayer that the annual LLC tax shall continue to be due until a Certificate of Dissolution is filed with the California SOS. (R&TC, § 17941(b)(2).)

[1] As more than six months has passed since appellant filed its claim for refund of the annual LLC tax, OTA has jurisdiction to hear and decide the issue. (See Cal. Code Regs., tit. 18, § 30103(a)(4).)

[2] R&TC sections 17946 and 17947 are limited exceptions to the annual LLC tax. Appellant does not argue that these provisions apply; based on the facts, R&TC section 17946 is inapplicable, and the record lacks evidence showing that all requirements for R&TC section 17947 were met.

Appellant was organized in California in 2019, and the annual LLC tax was due until appellant filed a Certificate of Dissolution with the California SOS, which it filed on January 14, 2025. Therefore, appellant was liable for the annual LLC tax for the 2023 tax year.

Appellant asserts that its bookkeeper did not properly terminate the LLC in the 2023 tax year. Appellant also asserts that it was an honest mistake that it did not pay, because appellant was under the impression that the LLC had been terminated. However, there is no reasonable cause exception to the annual LLC tax imposed under R&TC section 17941. (*Appeal of Patient Comfort Services, LLC*, 2021-OTA-300P.) Therefore, appellant is liable for the LLC annual tax.

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

R&TC section 19132(a)(1)(D) provides that, unless it is shown that the failure to pay is due to reasonable cause, a late payment penalty is imposed when a taxpayer fails to pay the annual LLC tax required to be paid by R&TC section 17941. R&TC section 17941(c) provides that the annual LLC tax is due and payable on or before the 15th day of the fourth month of the taxable year. Appellant does not dispute that it untimely paid the annual LLC tax, nor does it dispute the imposition or calculation of the late payment penalty.

The late payment penalty may be abated if the taxpayer shows that the failure to make a timely payment of tax was due to reasonable cause. (R&TC, § 19132(a)(1).) The taxpayer has the burden of proof to show that reasonable cause exists to support abatement of the penalty. (*Appeal of Red Vision Systems, Inc*., 2023-OTA-561P.) To establish reasonable cause for a late payment of tax, a 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. (*Ibid*.) Unsupported assertions are not sufficient for a taxpayer to carry that burden. (*Ibid*.)

Here, appellant argues that reasonable cause exists to abate the penalty because its previous bookkeeper did not terminate appellant per instructions from the owner, and appellant was under the impression that it had been terminated and that the tax did not need to be paid. Appellant asserts that the failure to pay was an honest mistake. However, ignorance or a misunderstanding of the law generally does not excuse a taxpayer's noncompliance with California's tax laws. (See *Appeal of Wright Capital Holdings LLC,* 2019-OTA-219P.) Furthermore, a taxpayer's reliance on a tax adviser must involve reliance on substantive tax advice and not on simple clerical duties. (*Appeal of Mauritzson*, 2021-OTA-198P.) Here, appellant relied on the previous bookkeeper to file paperwork to terminate the LLC, which is a clerical duty rather than substantive tax advice. Because appellant provides no explanation or evidence that the failure to make a timely payment of the proper amount of tax occurred despite

the exercise of ordinary business care and prudence, the late payment penalty may not be abated. (See *Appeal of Scanlon*, 2018-OTA-075P.)

Issue 3: Whether appellant is entitled to interest abatement.

R&TC section 19101(a) provides that 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. The imposition of interest is mandatory, and it can only be abated in certain limited situations inapplicable here. (R&TC, § 19101(a); *Appeal of Summit Hosting LLC*, 2021-OTA-216P.) Interest is not a penalty; it is compensation for the taxpayer's use of money that should have been paid to the state. (*Appeal of Rougeau*, 2021-OTA-335P.) 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 (pertaining to an unreasonable error or delay in FTB's performance of a ministerial or managerial act), 19112 (pertaining to extreme financial hardship),[3] or 21012 (pertaining to reliance on FTB's written advice).

Appellant asserts the same reasonable cause arguments for interest abatement as for the late payment penalty. However, appellant does not allege, and the record does not show, that R&TC sections 19104 or 21012 are applicable. Thus, appellant is not entitled to interest abatement.

[3] OTA has no authority to review FTB's action denying a claim of extreme financial hardship under R&TC section 19112. (*Appeal of Moy*, 2019-OTA-057P.)

HOLDINGS

1. Appellant was subject to the annual LLC tax.
2. Appellant has not established reasonable cause for the late payment of tax.
3. Appellant is not entitled to interest abatement.

DISPOSITION

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

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Asaf Kletter
Administrative Law Judge

We concur:

Signed by:
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Greg Turner
Administrative Law Judge

DocuSigned by:
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Huy "Mike" Le
Administrative Law Judge

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