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7 **BOARD OF EQUALIZATION**

8 **STATE OF CALIFORNIA**

10 In the Matter of the Appeal of:

) **HEARING SUMMARY**

) **FRANCHISE AND INCOME TAX APPEAL**

12 **HAZEL STREET, LLC**

) Case No. 935826

14 Year
15 2013

14 Claim
15 For Refund
16 \$864

16 Representing the Parties:

17 For Appellant: Shawn Nowakhtar, CPA

18 For Franchise Tax Board: Eric A. Yadao, Tax Counsel

20 QUESTION: Whether appellant has shown reasonable cause for the late filing of its tax return.

22 HEARING SUMMARY

23 Appellant is a limited liability company (LLC) that registered with the Secretary of
24 State's (SOS) Office to do business in California beginning on October 1, 2012. Appellant untimely
25 filed its 2013 income tax return (Form 568) on July 2, 2015, reporting a tax of \$800, payments of \$800,
26 and tax due of zero. (Resp. Op. Br., p. 1; Exs. A & B.)

27 Thereafter, respondent issued appellant a Notice of Balance Due dated August 11, 2015,
28 indicating a late filing penalty of \$864. Appellant paid the balance and filed a claim for refund.

1 Appellant contended that its tax preparer inadvertently missed e-filing the return. Thereafter,
2 respondent denied appellant's claim for refund. This timely appeal followed. (Resp. Op. Br., pp. 1-2;
3 Appeal Letter, attachments.)

4 Appellant's Contentions

5 Appellant contends that its tax preparer prepared its 2013 return, which was on extension,
6 and submitted it to appellant for review and approval. Appellant contends that its managing member
7 signed and returned Form 8453-LLC (California e-file Return Authorization for Limited Liability
8 Companies) to the tax preparer by June 5, 2014, to be filed electronically. Appellant contends that, due
9 to an administrative error, the tax preparer assumed that the return was filed electronically and removed
10 the entity from its list of unfiled tax returns. (Appeal Letter.)

11 Appellant contends that it has taken all of the necessary steps to make sure that its tax
12 return was prepared and filed on a timely basis. Appellant contends that all Schedules K-1 were
13 furnished to the respective members, who reflected the same on their tax returns. Appellant argues that
14 it did not have any control over the tax preparer's administrative error and, therefore, should not be
15 penalized for a third-party's act or omission. (Appeal Letter.)

16 Respondent's Contentions

17 Respondent asserts that R&TC section 18633.5, subdivision (a), requires every LLC
18 classified as a partnership for California tax purposes and doing business in California to file a tax
19 return on or before the fifteenth day of the fourth month following the close of the taxpayer's taxable
20 year. Respondent asserts that R&TC section 18633.5, subdivision (i)(3), requires every LLC doing
21 business in California to file a tax return on or before the fifteenth day of the fourth month after the
22 close of the taxable year. (Resp. Op. Br., p. 2.)

23 Respondent asserts that appellant, as a calendar-year filer, was required to file its 2013
24 return by April 15, 2014. Respondent asserts that, while R&TC section 18567 permits a six-month
25 paperless extension for partnerships to file a state tax return if the return is filed within six months of
26 April 15th, the original due date of the return, no extension exists, however, if the return is not filed
27 within that extension period. Respondent asserts that appellant did not file its return until July 2, 2015,
28 and, thus, the return was not timely filed. (Resp. Op. Br., p. 2.)

1 Respondent asserts that, because appellant's return was filed late, respondent imposed an
2 LLC late filing penalty pursuant to R&TC section 19172, which provides that a late filing penalty is to
3 be imposed when an LLC fails to file a tax return on or before the time prescribed, unless it is shown
4 that the failure is due to reasonable cause. Respondent asserts that, for the appeal year, R&TC section
5 19172, subdivision (b), provides that the amount of the penalty is \$18 multiplied by the number of
6 persons who were members in the LLC during any part of the taxable year. Respondent asserts that the
7 penalty is computed for each month during which the failure to file continues, up to a maximum of
8 twelve months. Respondent asserts that appellant is comprised of four members and that it filed its
9 return more than twelve months late and, therefore, the R&TC section 19172 penalty of \$864 was
10 properly imposed (i.e., \$18 per month x 4 members x 12 months). (Resp. Op. Br., p. 2.)

11 Respondent contends that appellant has not established reasonable cause for failing to
12 timely file because a taxpayer's reliance on an agent, such as an accountant or tax attorney, to file a
13 return by the due date is not reasonable cause. Respondent asserts that, in *United States v. Boyle* (1985)
14 469 U.S. 241, reasonable cause was not established when a taxpayer relied on an agent to file a return
15 and the agent failed to timely file the return due to a clerical error. Respondent argues that, like *Boyle*,
16 *supra*, appellant provided its information to its tax preparer and signed the prepared return for the tax
17 preparer to file. Respondent asserts that, however, the tax preparer, due to an administrative error,
18 failed to file that return and the late filing penalty resulted. Therefore, respondent argues that the same
19 conclusion should result here, that such reliance is not reasonable cause for a late filing. (Resp. Op.
20 Br., pp. 3-4.)

21 Applicable Law

22 Respondent's determination is presumed to be correct, and a taxpayer has the burden of
23 proving error. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; *Appeal of Aaron and Eloise Magidow*,
24 82-SBE-274, Nov. 17, 1982.)¹ Unsupported assertions are not sufficient to satisfy a taxpayer's burden
25 of proof. (*Appeal of Aaron and Eloise Magidow, supra.*) Respondent's determinations cannot be
26 successfully rebutted when the taxpayer fails to provide uncontradicted, credible, competent, and
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28 ¹ Board of Equalization cases are generally available for viewing on the Board's website: www.boe.ca.gov.

1 relevant evidence as to the issues in dispute. (*Appeal of Oscar D. and Agatha E. Seltzer*, 80-SBE-154,
2 Nov. 18, 1980.)

3 Late Filing Penalty

4 R&TC section 18633.5, subdivision (a), provides, in part, that an LLC classified as a
5 partnership shall file its return on or before the fifteenth day of the fourth month following the close of
6 its taxable year. R&TC section 18567 permits a six-month extension for an LLC to file a return if the
7 return is filed within six months of the return due date. If the return is not filed within six months of its
8 original due date, no extension exists. R&TC section 19172 imposes a late filing penalty when a
9 partnership fails to file a return by the prescribed date unless it is shown that the failure was due to
10 reasonable cause. The amount of the penalty is calculated as \$18 multiplied by the number of persons
11 who were partners in the partnership during any part of the taxable year multiplied by the number of
12 months the return is late, up to a maximum of 12 months. (Rev. & Tax. Code, § 19172, subd. (b).)

13 To establish reasonable cause, a taxpayer must show that the failure to timely file
14 occurred despite the exercise of ordinary business care. (*Appeal of Howard G. and Mary Tons*,
15 79-SBE-027, Jan. 9, 1979; *Appeal of Stephen C. Bieneman*, 82-SBE-148, July 26, 1982.) A taxpayer's
16 reason for failing to timely file must be such that an ordinarily intelligent and prudent businessperson
17 would have acted similarly under the circumstances. (*Appeal of Joseph W. and Elsie M. Cummings*,
18 60-SBE-040, Dec. 13, 1960.)

19 In *United States v. Boyle*, *supra*, 469 U.S. 241, the Supreme Court stated that it is
20 reasonable for a taxpayer to rely on the advice of an accountant or attorney when that accountant or
21 attorney advises a taxpayer as to a matter of tax law, such as whether a tax liability exists or a return is
22 required to be filed. (See *Estate of La Meres v. Commissioner* (1992) 98 T.C. 294.) However, the
23 Supreme Court also stated that one does not need to be a tax expert to know that tax returns have fixed
24 filing dates and taxes must be paid when due. A taxpayer's reliance on an accountant or attorney
25 cannot be a substitute for compliance with an unambiguous statute and "it requires no special training
26 or effort to ascertain a deadline and make sure that it is met." (*Id.*) Each taxpayer has a personal,
27 non-delegable obligation to file a tax return by the due date. A taxpayer's reliance on another to file a
28 return by the due date is not reasonable cause. (*United States v. Boyle*, *supra*, 469 U.S. 241.)

1 “Reliance on another to perform the ministerial task of filing or paying cannot be reasonable cause for
2 failure to file or pay by the deadline.” (*Estate of Thouron v. United States* (3d Cir. Pa. 2014) 752 F.3d
3 311.)

4 STAFF COMMENTS

5 Appellant’s tax year ended on December 31, 2013. Therefore, appellant was required to
6 file a California tax return on or before the original due date of April 15, 2014, or by the extended due
7 date of October 15, 2014, pursuant to R&TC sections 18633.5 and 18657. However, appellant filed its
8 California return on July 2, 2015, which was after the original and extended deadlines. The parties are
9 in agreement that the return was filed late and appellant only argues that it has reasonable cause for the
10 late filing.

11 Appellant contends that it relied on its tax preparer to file the return, but the tax preparer
12 failed to timely file the return due to an administrative error. Appellant did not rely on its tax preparer
13 as to a matter of tax law and, therefore, because appellant relied on the tax preparer to perform the
14 non-delegable duty of filing the return, appellant cannot use the reliance on its tax preparer to support a
15 finding of reasonable cause pursuant to *Boyle, supra*.

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19 Hazel Street LLC_jl

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