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7 **BOARD OF EQUALIZATION**

8 **STATE OF CALIFORNIA**

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10 In the Matter of the Appeal of:) **HEARING SUMMARY¹**
11) **PARTNERSHIP TAX APPEAL**
12 **RIVER BELL PARK APARTMENTS**) Case No. 874722

	<u>Year</u>	<u>Claim For Refund</u>
	2012	\$1,080

16 Representing the Parties:

17 For Appellant: Paul Prudler, Partner

18 For Franchise Tax Board: Joel M. Smith, Tax Counsel

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20 QUESTION: Whether appellant has shown that reasonable cause exists for the late filing of its 2012
21 return.
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23 HEARING SUMMARY

24 Background

25 Appellant, a general partnership, filed a 2012 California Partnership Return of Income
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27 ¹ This appeal was originally scheduled for the January 26-28, 2016 Sacramento oral hearing calendar, but was postponed at
28 appellant's request due to a scheduling conflict. The matter was rescheduled to the March 29-30, 2016 Sacramento oral
hearing calendar. The matter was then postponed due to appellant's scheduling conflict and placed on the May 29-30, 2016
Sacramento oral hearing calendar.

1 (Form 565) late on May 15, 2014. After receiving the return, the Franchise Tax Board (FTB or
2 respondent) imposed a late filing penalty of \$1,080. In response, appellant requested that the penalty be
3 abated. Specifically, appellant asserted that its 2012 partnership return was supposed to have been filed
4 electronically (“e-filed”) by its former certified public accountant (CPA) when the return was
5 completed, which appellant stated occurred prior to September 15, 2013. Appellant also asserted that
6 (i) all of the federal Form K-1s were timely distributed to the partners and (ii) each partner timely filed
7 his/her personal income tax return. Appellant stated that, during the preparation of its 2013 partnership
8 return, it was discovered that appellant’s prior CPA never electronically filed appellant’s 2012
9 partnership return. Appellant also stated that, when the situation was discovered, it immediately filed a
10 hard copy of its 2012 California partnership return. Appellant asserted that it has taken steps, including
11 the retention of a new CPA, to make sure that all of its future partnership returns are filed timely.
12 Afterwards, appellant paid the late filing penalty (plus applicable interest) in full. The FTB treated the
13 abatement request as a claim for refund, which the FTB denied. In response, appellant filed this timely
14 appeal. (FTB opening brief (FTB OB), p. 1 & Exs. A, C, & D; Appeal Letter (AL), Attachments.)

15 Contentions

16 Appellant’s Appeal Letter

17 Appellant argues that the FTB should refund the late filing penalty. Specifically,
18 appellant asserts that the late filing occurred because Mr. Paul Prudler, one of appellant’s partners,
19 changed the partnership’s accountant and, at the time, he was under the impression that the original
20 accountant had filed appellant’s 2012 return in a timely manner, as (i) the original accountant sent him a
21 hard copy of the 2012 partnership return, and (ii) all of the partnership’s K-1s were timely distributed to
22 the partners. Appellant also contends that all of the partners timely filed their personal tax returns.
23 Appellant asserts that, when the new accountant came into the picture, the new accountant discovered
24 that the 2012 state and federal partnership returns had not been electronically filed. Appellant states
25 that, after discovering the situation, it immediately filed appellant’s 2012 state and federal returns.
26 Appellant contends that neither California nor the federal government have suffered any lost funds, as
27 all taxes were timely paid (via the individual partners and their K-1 income). Appellant contends the
28 Internal Revenue Service (IRS) has waived the federal late payment penalty. In support, appellant

1 provides a copy of a letter dated August 12, 2014, from the IRS, which states that the IRS is removing
2 the federal late filing penalty on the basis of appellant's good filing history. Appellant asserts that the
3 FTB should likewise remove the penalty. (AL, pp. 1-2.)

4 The FTB's Opening Brief

5 The FTB asserts that a partnership return is required to be filed on or before the 15th day
6 of the fourth month following the close of the tax year, citing Revenue and Taxation Code (R&TC)
7 section 18633. The FTB contends that the late filing penalty was properly imposed, as appellant was
8 required to file its 2012 partnership return by April 15, 2013, but filed the return more than 12 months
9 late on May 15, 2014. The FTB asserts that the late filing penalty under R&TC section 19172 is
10 calculated at a rate of \$18 multiplied by the number of partners in the partnership during any part of the
11 taxable year for each month the return is late, not to exceed 12 months. Based on the foregoing, the
12 FTB asserts that the late filing penalty was properly calculated as \$1,080 (i.e., \$18 x 5 partners x
13 12 months). The FTB contends that its imposition of a late filing penalty is presumed correct and a
14 taxpayer has the burden of showing reasonable cause to abate the penalty, which means that the
15 taxpayer must show it exercised ordinary business care and prudence, citing the *Appeal of Roger W.*
16 *Sleight*, 83-SBE-244, decided by this Board on October 26, 1983.² The FTB states that appellant
17 argues that reasonable cause exists for its failure to file a timely 2012 tax return because its prior
18 accountant failed to timely file its return. In response, the FTB contends that a taxpayer has a non-
19 delegable obligation to file its tax return by the due date and that a taxpayer's reliance on an agent, such
20 as an accountant, to file a timely return is not reasonable cause, citing *United States v. Boyle* (1985)
21 469 U.S. 241. Finally, in relation to appellant's argument that the IRS abated the federal late filing
22 penalty and that the FTB should similarly abate the California late filing penalty, the FTB states that the
23 IRS abated the federal late filing penalty on the basis of appellant's good filing history, but that the
24 FTB does not have such authority. (FTB OB, pp. 1-3.)

25 Appellant's Reply Brief

26 Appellant asserts that, when Mr. Prudler engaged the former accountant to prepare
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² Board of Equalization cases are generally available for viewing on this Board's website (www.boe.ca.gov).

1 appellant's 2012 partnership return, the accountant issued an engagement letter, which Mr. Prudler
2 states he signed and returned. Appellant states that it thought the engagement letter gave the accountant
3 the authorization to electronically (e-file) the partnership return. Appellant states that the accountant
4 timely mailed to K-1s to the partners and provided it with a copy of the 2012 partnership return.
5 Appellant contends that, the following year, appellant engaged a new accountant to prepare appellant's
6 2013 partnership return and, at the time, appellant noticed a version of appellant's 2012 partnership
7 return that looked like it was supposed to be filed by mail. Appellant states that, at the time, it thought
8 appellant's 2012 partnership return had been filed by mail; nevertheless, appellant states that it filed the
9 2012 partnership return "just to be sure." Appellant contends that neither California nor the federal
10 government have suffered any lost funds and that the IRS has waived the federal late payment penalty.
11 In addition, appellant asserts that the former accountant made the same filing mistake with two other
12 partnerships. (App. Reply Br., pp. 1-2.)

13 Applicable Law

14 R&TC section 18633 provides that a partnership shall file its return on or before the
15 15th day of the fourth month following the close of its taxable year. R&TC section 19172 provides that
16 a late filing penalty is to be imposed when a partnership fails to timely file a return unless the
17 partnership shows that the failure is due to reasonable cause. (Rev. & Tax. Code, § 19172, subd.
18 (a)(2).) The late filing penalty is computed at \$18 per partner per month, or fraction thereof, that the
19 return is late, up to a maximum of 12 months. (Rev. & Tax. Code, § 19172, subd. (b).)

20 The duty to file a tax return by a statutory deadline cannot be delegated to an accountant.
21 (*Boyle v. United States, supra.*) Ascertaining a deadline is within the ambit of a taxpayer's
22 nondelegable duties, because a deadline is a nonsubstantive matter. (*Knappe v. United States* (9th Cir.
23 Cal. 2013) 713 F.3d 1164.) However, a taxpayer's reliance on an accountant for advice on a
24 substantive matter of tax law, such as whether a liability exists, is reasonable since most taxpayers are
25 not competent to discern error in the advice. (*Boyle, supra*, at p. 251.) To establish that reasonable
26 cause exists under *Boyle*, a taxpayer must show that he or she relied on a tax professional for
27 substantive tax advice as to whether a tax liability exists and the following conditions are met: (1) the
28 person reasonably relied on by the taxpayer is a tax professional with competency in the subject tax

1 law; and (2) the tax professional's advice is based on the taxpayer's full disclosure of relevant facts and
2 documents. (*Boyle, supra.*)

3 STAFF COMMENTS

4 At the oral hearing, appellant should be prepared to further support its argument that
5 reasonable cause exists for the late filing of its 2012 return.

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