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7 **BOARD OF EQUALIZATION**
8 **STATE OF CALIFORNIA**
9

10 In the Matter of the Appeal of:) **HEARING SUMMARY**
11) **PARTNERSHIP TAX APPEAL**
12 **CHA RADIOLOGY ASSOCIATE¹**) Case No. 595850
13)
14)

	<u>Years</u>	<u>Claims For Refund²</u>
	2008	\$100
	2009	\$100

17 Representing the Parties:

18 For Appellant: Eun Sug Cha, General Partner
Joseph Cha, General Partner
19

20 For Franchise Tax Board: Eric A. Yadao, Tax Counsel
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22 QUESTION: Whether appellant has demonstrated that it is entitled to refunds of the late filing
23 penalties imposed under Revenue and Taxation Code (R&TC) section 19172 for the
24 tax years 2008 and 2009.

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27 ¹ Appellant lists an address in Los Angeles County, California.

28 ² The claims for refund of \$100 for 2008 and \$100 for 2009 are for refunds of late filing penalties imposed under Revenue and Taxation Code (R&TC) section 19172.

1 HEARING SUMMARY

2 Background

3 Appellant is a general partnership that filed its 2008 and 2009 California income tax
4 returns with the Franchise Tax Board (FTB or respondent) in March of 2011.³ (FTB opening brief (FTB
5 OB), p. 1 & Exs. A-C.) On its 2008 California return, appellant reported zero income and zero tax due.
6 On its 2009 California return, appellant reported (i) gross receipts of \$39,000, (ii) deductions of \$28,197,
7 and (iii) ordinary income of \$10,803. (*Id.* & Ex. C.) Appellant's 2008 and 2009 California returns list
8 Eun Sug Cha and Joseph Cha as appellant's general partners.⁴ (*Id.* & Exs. B-C.)

9 Because appellant filed its 2008 and 2009 California returns late, the FTB imposed late
10 filing penalties under R&TC section 19172. (*Id.*) In response, appellant paid the penalties in full.
11 (*Id.* p. 1.) Afterwards, in a letter dated July 11, 2011, appellant requested refunds of the penalties on the
12 basis that (i) one of its partners, Eun Sug Cha, was having financial problems and did not realize that
13 appellant must file tax returns to the FTB, and (ii) appellant did not do business in 2008 and 2009:

14 I have financial problems right now. I have only Income S.S.A. Disability Insurance
15 benefit. . . . I didn't know & realize that I must file tax report to your dept. on time (sic)
manner (sic) Even though I didn't do my business on (sic) 2008 and 2009. (*Id.*, Ex. D.)

16 After reviewing the matter, the FTB sent appellant a letter, dated October 31, 2011, denying appellant's
17 claims for refund on the basis that appellant had not shown reasonable cause for the late filing of its tax
18 returns. (*Id.* p. 2.) In response, appellant filed this timely appeal.

19 Contentions

20 Appellant's Appeal Letter

21 Appellant argues that the FTB should refund the late filing penalties for 2008 and 2009
22 on the basis of reasonable cause. (Appeal Letter (AL), p. 1.) Specifically, in an unsigned appeal letter,
23 appellant asserts that (i) one of its general partners (as the appeal letter is unsigned, appellant is possibly
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26 ³ The FTB asserts that appellant filed its 2008 and 2009 California returns on March 15, 2011. However, Appeals Division
staff (staff) notes that copies of appellant's 2008 and 2009 California returns (which are attached to the FTB's opening brief)
are dated March 21, 2011 and March 22, 2011, respectively.

27 ⁴ According to these returns, Eun Sug Cha had a 91 percent ownership interest and Joseph Cha had a 9 percent ownership
28 interest in the partnership.

1 referring to Eun Sug Cha) has suffered from a permanent mental disability since 2007, (ii) one of its
2 general partners (possibly Eun Sug Cha) could not complete appellant's tax filings, beginning with the
3 2008 tax year, and (iii) one of its general partners (possibly Eun Sug Cha) has received Social Security
4 Administration (SSA) mental disability benefits since 2007. (*Id.*) In support, appellant provides the
5 following documents with its appeal letter: (1) a letter dated November 4, 2011, from the SSA to
6 Eun S. Cha, and (2) various medical documents for a person named Keun Ja Kim.

7 The FTB's Opening Brief

8 The FTB asserts that it properly imposed the late filing penalties under R&TC section
9 19172 and appellant has not shown reasonable cause for relief from those penalties. (FTB OB, pp. 3-4.)

10 First, the FTB argues that, even though an illness might constitute reasonable cause for
11 relief from the late filing penalties, if the illness simply caused a taxpayer to sacrifice the timeliness of
12 one aspect of the taxpayer's affairs to pursue other aspects of the taxpayer's affairs, then the taxpayer
13 must bear the consequences of that choice, citing the *Appeal of W.L. Bryant*, 83-SBE-180, decided on
14 August 17, 1983.⁵ (*Id.* p. 3, Ex. E.) As for the facts at hand, the FTB contends, even though appellant
15 asserts that a general partner's disability since 2007 prevented appellant from filing timely returns for
16 2008 and 2009, the following factors show that the general partner's alleged illness does not constitute
17 reasonable cause for relief from the late filing penalties for 2008 and 2009: (a) "the partnership
18 continued to earn income in 2009 when the partner claimed that the partnership was unable to file its
19 2008 return," and (b) "the partner with the claimed disability was able to timely file his individual 2008
20 and 2009 returns in spite of his disability." (FTB OB, p. 3.)

21 Second, the FTB argues that even if appellant was unaware of the tax return filing
22 requirements, appellant's ignorance of the law is not an excuse for failing to file timely returns, citing
23 the *Appeal of J. Morris and Leila G. Forbes*, 67-SBE-042, decided on August 7, 1967. (*Id.*, Ex. E.)

24 Third, the FTB asserts that (i) each partner has equal rights in the management and
25 conduct of business, citing California Corporations Code section 16401, subdivision (f), and (ii) "[t]o
26 the extent appellant alleges that partner Eun Sug Cha was disabled since 2007, appellant offers no
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28 ⁵ Board of Equalization cases are generally available for viewing on the Board's website (www.boe.ca.gov).

1 information to explain how or why the other partner Joseph Cha was somehow prevented from filing the
2 return.” (*Id.* p 4.)

3 Fourth, the FTB argues that, to show reasonable cause, the taxpayer must present credible
4 proof that the circumstances of the illness (or personal difficulties) completely prevented the taxpayer
5 from filing a timely return, citing the *Appeal of Allen L. and Jacqueline M. Seaman, 75-SBE-080*,
6 decided on December 16, 1975. (*Id.* p. 4. & Ex. E.) As to the facts at hand, the FTB argues that (i)
7 “appellant has offered no explanation as to the circumstances of a partner’s illness that demonstrates the
8 partnership was completely prevented from filing a timely return” and (ii) “the one document offered by
9 appellant as evidence of the partner’s disability [i.e., the SSA letter dated November 4, 2011] is absent
10 any facts describing the illness, its effects or limitations on the partner, and when the disability arose and
11 its duration.” (FTB OB, p. 4.)

12 Finally, as to the documents pertaining to the medical condition of Keun Ja Kim, the FTB
13 argues that appellant has not explained how Keun Ja Kim’s medical condition is relevant to the issue of
14 reasonable cause, as Keun Ja Kim “was not a partner and had no duty to ensure the timely filing of the
15 partnership’s returns for the appeal years.” (*Id.*)

16 Appellant’s Reply Brief

17 Appellant’s arguments in its reply brief are hand-written and somewhat illegible.
18 However, appellant appears to be asserting that (i) Eun Sug Cha and Joseph Cha are not certified public
19 accountants (CPAs) and (ii) Eun Sug Cha and Joseph Cha did not know that appellant had to file
20 California income tax returns for 2008 and 2009.

21 In addition, appellant appears to be asserting that the FTB should abate the late filing
22 penalties for 2008 and 2009 on the basis that the Internal Revenue Service (IRS) abated a federal late
23 filing penalty for the 2009 tax year. In support, appellant provides a copy of an IRS letter dated May 6,
24 2011, wherein the IRS grants abatement of the 2009 federal partnership late filing penalty. The IRS
25 letter states that “this action has been taken solely on the fact that you have a good history of timely
26 filing and timely paying.”

27 Finally, attached to its reply brief, appellant provides an “Acknowledgement of
28 Satisfaction of Judgment” (in which Eun Sug Cha and Joseph Cha of “Cha Radiology Associates” are

1 identified as judgment creditors), the relevance of which is unclear from appellant's argument in its
2 reply brief.

3 FTB's Reply Brief

4 The FTB states that the IRS abated the 2009 federal late filing penalty due to appellant's
5 good federal filing history—not reasonable cause. The FTB also asserts that it cannot abate the
6 California late filing penalties for 2008 and 2009 because R&TC section 19172 only allows for the
7 abatement of late filing penalties based on reasonable cause, which the FTB asserts appellant has not
8 shown.

9 Next, the FTB states that it "is in the process of adopting Regulation section 19131 for
10 abatement of the failure to pay and/or failure to file ('timeliness') penalties for taxpayers with compliant
11 filing histories." The FTB asserts, however, that "[b]ecause appellant incurred partnership late filing
12 penalties for tax year 2008 (imposed in calendar year 2009) and tax year 2009 (imposed in calendar year
13 2010) within four years of the request, appellant does not qualify for abatement of the penalty for either
14 2008 or 2009 under the proposed regulation."⁶

15 Applicable Law

16 R&TC section 18633 provides that a partnership shall file its return on or before the 15th
17 day of the fourth month following the close of its taxable year. R&TC section 19172 provides that a late
18 filing penalty is to be imposed when a partnership fails to timely file a return unless the partnership
19 shows that the failure is due to reasonable cause. (Rev. & Tax. Code, § 19172, subd. (a)(2).) The late
20 filing penalty is computed at \$10 per partner per month, or fraction thereof, that the return is late, up to a
21 maximum of five months.⁷ (Rev. & Tax. Code, § 19172, subd. (b).)

22 STAFF COMMENTS

23 At the oral hearing, appellant should be prepared to show reasonable cause for the
24 abatement of the late filing penalties. Staff notes that the SSA letter dated November 4, 2011, does not
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⁶ We note that the FTB is no longer pursuing the adoption of this regulation.

27 ⁷ Staff notes that R&TC section 19172 was amended, and applicable to returns required to be filed after January 1, 2011, such
28 that the penalty is calculated at a rate of \$18 per month per partner up to a maximum of 12 months.

1 provide any facts describing Eun Sug Cha's alleged illness or showing how the alleged illness prevented
2 Eun Sug Cha from filing appellant's 2008 and 2009 returns in a timely manner. Furthermore, as noted
3 above, the FTB asserts that Eun Sug Cha filed his personal 2008 and 2009 California income tax returns
4 in a timely manner. In addition, staff notes that, under California Corporations Code section 16401,
5 subdivision (f), each partner is generally given equal rights in the management and conduct of the
6 business. Thus, appellant should be prepared to address why Joseph Cha did not file appellant's 2008
7 and 2009 California returns in a timely manner. Also, appellant should be prepared to discuss the
8 relevance of the medical documents provided for Keun Ja Kim, who is not listed as a partner in
9 appellant's 2008 and 2009 California returns.

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