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OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	)	OTA Case No. 18012318
	)	
MARGARET C. YUNG	)	Date Issued: May 14, 2018
	)	
AND WAI Y. YUNG	)	
	)	

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: Margaret C. Yung, Taxpayer
Wai Y. Yung, Taxpayer

For Respondent: Eric A. Yadao, Tax Counsel III

KWEE, Administrative Law Judge: On December 15, 2017, the California State Board of Equalization (BOE) notified appellants that it had decided to sustain an action by the Franchise Tax Board (FTB or respondent) denying appellants' claim for refund in the amount of $584.10 for the 2014 tax year.[1] Appellants timely filed a petition for rehearing pursuant to section 19048 of the Revenue and Taxation Code, on January 10, 2018.

Upon consideration of the petition for rehearing, we conclude that appellants have not established good cause for a new hearing. Specifically, a petition for rehearing must contain all the facts and legal authorities necessary to either: (1) identify an irregularity in the proceedings that prevented the fair consideration of the appeal; (2) identify an accident or surprise that occurred, which ordinary caution could not have prevented; (3) identify newly discovered, relevant evidence, which the filing party could not have reasonably discovered and provided prior to the decision; or (4) demonstrate there was insufficient evidence to justify the decision or the decision is contrary to law. (Cal. Code Regs., tit. 18, § 30602(c)(5).) Further, as provided in the *Appeal of Wilson Development, Inc.*, 94-SBE-007, October 5, 1994, good cause for

[1] This amount includes a late payment penalty of $495.60, and $88.50 in interest.

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granting a new hearing may be shown where one of the above-identified grounds exists and the rights of the complaining party are materially affected.

The disputed item is a penalty assessed for failing to timely pay the tax allocable to appellant Margaret Yung's share of ordinary income from Valota Development Partners LLC, a California entity. In the petition for rehearing, appellants reargue the facts previously submitted to BOE for consideration. Appellants contend, in pertinent part, that the failure to timely pay their taxes was reasonable considering that: (1) appellants are not California residents; (2) appellants were never required to file a California tax return prior to 2014; (3) appellants are "silent" minority partners in the partnership; (4) the partnership began operations in 2013 and had a loss that year; (5) appellants were told their 2014 income from the partnership would be similar to 2013; (6) appellants never received any financial statements from the partnership because it was a small business; (7) during the few times appellants initiated contacts with the partnership, there was no mention of any gain, therefore, "it is unreasonable to expect [a]ppellants to request an estimate of income for purposes of timely paying tax owed"; (8) the managing member of the partnership "always releases K-1's after April 15 every year"[2]; (9) appellants did not receive a distribution from the partnership to pay their California tax liability; and (10) appellants have a good filing history with the Internal Revenue Service (IRS).

We understand appellants' contention to be that the evidence was insufficient to justify BOE's decision or that the decision was contrary to law. (See Cal. Code Regs., tit. 18, § 30602(c)(5)(D).) The question of whether a decision is contrary to law is not one that involves a weighing of the evidence, but instead requires a finding that the decision is "unsupported by any substantial evidence." (*Sanchez-Corea v. Bank of America* (1985) 38 Cal.3d 892, 907.) The fact that appellants are dissatisfied with the outcome of an appeal is not grounds for a rehearing. California imposes a late payment penalty for a taxpayer's failure to pay the amount of tax shown on a return on or before the due date, unless it is established that the late payment was due to reasonable cause and not due to willful neglect. (Rev. & Tax. Code, § 19132(a)(1).) As a general matter, in order for a taxpayer to establish that a failure to act was due to reasonable cause, the taxpayer must show that the failure occurred despite the

[2] A Schedule K-1 is generally used to report a partner's share of income, deductions, and credits. We note that even a limited partner generally has the right to inspect and copy information regarding the financial condition of the partnership. (See Corp. Code, § 15903.04.)

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exercise of ordinary business care and prudence, or that cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of Stephen C. Bieneman*, 82-SBE-148, Jul. 26, 1982; *Appeal of Howard G. and Mary Tons*, 79-SBE-027, Jan. 9, 1979.)

While it may be possible that a different fact-finder could have found sufficient evidence to justify abating the late payment penalty, the applicable inquiry to establish that the decision is contrary to law is whether BOE's decision is "unsupported by any substantial evidence." (*Sanchez-Corea v. Bank of America, supra*, 38 Cal.3d at p. 907.) Appellant Margaret Yung knowingly invested in a partnership operating out of California, which at a minimum is sufficient to put appellants on notice of a possible California tax filing obligation. Further, by appellants' own admission, appellants had actual knowledge that the individual managing their partnership has a history of failing to timely provide tax information to appellants every year. Nevertheless, appellants were able to maintain a good filing history with the IRS.

By sustaining FTB's action, BOE concluded that appellants did not establish that the failure to timely pay the California tax was due to reasonable cause and not willful neglect. Appellants contend that it is unreasonable to expect "[a]ppellants to request an estimate of income for purposes of timely paying tax owed," and there are sufficient facts to find that appellants did not take any affirmative steps to do so. These contentions further support BOE's finding that appellants failed to exercise ordinary business care and prudence. Therefore, based on all the evidence in the record, we find there is sufficient evidence to support BOE's determination that appellants failed to establish that their failure to timely pay their California tax liability was due to reasonable cause and not willful neglect. Appellants have failed to demonstrate any error in law or that the evidence was insufficient to justify the decision.

In summary, appellants have not established good cause for a new hearing under any of the grounds required by Regulation 30602 or set forth in *Appeal of Wilson Development, Inc., supra*. For the foregoing reasons, appellants' petition is hereby denied.

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Andrew J. Kwee
Administrative Law Judge

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We concur:

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Neil Robinson
Administrative Law Judge

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Michael F. Geary
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Michael F. Geary
Administrative Law Judge