OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	)	OTA Case No. 18011095
	)	
DE BALMANN FAMILY HOLDINGS LLLP	)	Date Issued: August 23, 2018
	)	
	)	

OPINION

Representing the Parties:

For Appellant: Larry S. Blair, Esq.

For Respondent: Parviz Iranpour, Tax Counsel

J. JOHNSON, Administrative Law Judge: Pursuant to California Revenue and Taxation Code section 19324,[1] De Balmann Family Holdings LLLP (appellant) appeals an action by the Franchise Tax Board (respondent) in denying a claim for refund in the amount of $670.23 for the 2014 tax year.

Appellant waived its right to an oral hearing, and therefore this matter is decided based on the written record.

ISSUE[2]

Has appellant shown that the late-filing penalties assessed for 2014 should be abated?

FACTUAL FINDINGS

1. Appellant organized as a limited liability limited partnership (LLLP) in Delaware in 2012. Appellant was not registered with the California Secretary of State during 2014.

[1] All further statutory references are to "Sections" of the Revenue and Taxation Code unless otherwise stated.

[2] Appellant's claim for refund included a request for a refund of interest in addition to penalties. However, appellant has not provided a specific contention regarding interest abatement, and we find no apparent grounds for interest relief under these facts.

2. During 2014, appellant had two partners: de Balmann Family Management, LLC (general partner); and Yves C.M. de Balmann Revocable Trust (limited partner). Both partners were managed by Yves de Balmann, who moved to California in April 2014.
3. During the year at issue, appellant had income-generating property in the form of marketable securities and related investments, which were managed by financial advisors located in New York.
4. For partnerships doing business in California and using the calendar year reporting period, a Form 565 Partnership Return of Income (partnership return) for the 2014 tax year was due on April 15, 2015.
5. Respondent received information from the Internal Revenue Service indicating that appellant filed a federal return using a California address and received income sufficient to trigger a filing obligation. Because appellant did not file a partnership return with California, respondent issued a demand for tax return.
6. Appellant filed its 2014 partnership return on July 15, 2016. Appellant's return listed an address in Sonoma, California.[3] Appellant reported a loss on the year for 2014, and reported an amount due consisting of the $800 annual tax. Appellant made a payment of $1,600.
7. Respondent issued a Return Information Notice to appellant indicating a total amount due for 2014 of $1,470.23, consisting of the $800 annual tax, a $200 partnership late-filing penalty under Section 19131, a $432 late-filing penalty under Section 19172, and interest of $38.23. Respondent issued a refund of $129.77 after applying appellant's $1,600 payment.
8. Appellant filed a claim for refund on August 11, 2016, requesting a refund of the penalties and interest based on reasonable cause and the good faith of appellant in voluntarily filing its tax return. In appellant's claim for refund, it asserted that it used a California mailing address in 2014 out of convenience because "one of the members of the taxpayer moved to California."
9. Respondent denied appellant's claim for refund by letter on March 1, 2017. Respondent's letter stated that appellant had not shown reasonable cause sufficient to

[3] The same Sonoma, California address was listed on: appellant's 2014 federal return; Schedule K-1s issued by appellant for 2014; the 2014 partnership return for appellant's general partner; and on Mr. de Balmann's 2014 joint part-year resident California return.

abate the penalties, and asserted that "[d]oing business is not defined by the location of the business"; rather, "it is defined by the administrative function of the general partners."

10. Appellant filed this timely appeal.

DISCUSSION

Section 17935(a) generally provides that every limited partnership "doing business" in California shall pay an annual tax. The minimum tax for 2014 was $800. (Section 23153(d)(1).) Managerial functions performed by a taxpayer in California are sufficient to constitute "doing business" in the state, as defined in Section 23101, even if the business was formed in another state and its business activity was located in another state. (*Appeal of Reno Liquor Co., Inc.*, 59-SBE-004, Feb. 17, 1959.) Every general partner has the right to manage and conduct the activities of the partnership, and the activities of a general partner bind the partnership. (*Appeals of Amman & Schmidt Finanz AG, et al.*, 96-SBE-008, Apr. 11, 1996.)

Appellant contends that it was "merely a holding company that [passively] owns marketable securities." Although we accept appellant's contention that its primary business activity was conducted on a day-to-day basis by investment advisors located in New York, respondent's determination is based upon its conclusion that appellant became commercially domiciled in California after Mr. de Balmann, the manager of appellant's sole general partner, moved to California. We agree with that conclusion. Although appellant's primary business activity of investing in marketable securities may have been *conducted* in New York by third-party investment advisors, their activities had to have been *managed* and *directed* by appellant, and the only person shown to have had management authority for appellant was Mr. de Balmann, the manager of its general partner, who resided in California in and after April 2014.

> We perceive the law to be that where the corporation has only a paper domicile, where the only function performed by the state of incorporation is to breathe life into the corporation, and where no substantial corporate activities are thereafter carried on in that state, then the law looks at such corporation and says that that state where, under the facts, the corporation receives its greatest protection and benefits, *that state where the greatest proportion of its control exists, that state shall be the commercial domicile . . . .*

(*Southern Pacific Co. v. McColgan* (1945) 68 Cal.App.2d 48, 81, italics added; compare, *Appeal of Vinnell Corp.*, 78-SBE-030, May 4, 1978; *Appeal of Norton-Simon, Inc.*, 72-SBE-008, Mar.

28, 1972.) Since Mr. de Balmann appears to have conducted all the managerial functions for appellant in California starting in April 2014, appellant was commercially domiciled and, therefore, doing business in California in 2014 pursuant to Section 23101(b)(1). Accordingly, appellant was subject to tax in California and had a filing requirement for 2014.[4]

Section 18633 provides that every partnership subject to tax shall file its return on or before the 15th day of the fourth month following the close of its taxable year. Section 19131 provides that a late-filing penalty shall be imposed when a taxpayer fails to file a tax return on or before its due date, unless the taxpayer establishes that the late filing was due to reasonable cause and was not due to willful neglect. Section 19172 imposes an additional late-filing penalty when a partnership fails to timely file a return unless the appellant has shown that the failure was due to reasonable cause.

To establish reasonable cause, the taxpayer must show "the exercise of ordinary business care and prudence, or such cause as would prompt an ordinarily intelligent and prudent businessman to have so acted under similar circumstances." (*Appeal of Loew's San Francisco Hotel Corp.*, 73-SBE-050, Sept. 17, 1973.) Even if the taxpayer is unaware of a filing requirement, ignorance of the law is not an excuse for failing to file a timely return. (*Appeal of Diebold, Inc.*, 83-SBE-002, Jan. 3, 1983.)

Appellant's primary argument is that it was not doing business in California during 2014, and therefore did not have a filing requirement. Appellant provides a secondary argument that there was reasonable cause for the late filing of its return because it "reviewed the filing requirements and believed it had no filing requirement based on the fact that it was not doing business in California." Appellant does not describe what steps, if any, it took when it reviewed the filing requirements. In a different section of its brief, appellant states that "it is outlandish to conclude that [a]ppellant would expend significant time and effort to research to exhaustion whether it definitively had a filing requirement in California in 2014," asserting that an ordinary and prudent businessperson would have concluded that it did not have a filing requirement.

[4] Appellant asserts that *Swart Enterprises, Inc. v. Franchise Tax Bd.* (2017) 7 Cal.App.5th 497, supports its position. It does not. The putative taxpayer in that case was a foreign corporation that had no connection with California other than its ownership of a 0.2% passive interest in a limited liability company that was doing business in California. In this appeal, however, the taxpayer's sole general partner with authority to manage and direct the taxpayer was located in California, causing the taxpayer to be commercially domiciled in this state. Hence, the holding in *Swart Enterprises* has no applicability here.

Essentially, appellant contends that its failure to file a timely return was due to its belief that it did not have a filing obligation in California because it believed it was not doing business in California. However, being unaware of a filing requirement, by itself, does not constitute reasonable cause. Furthermore, an ordinary and prudent businessperson would have taken steps to determine whether it had a filing requirement in California when both of its partners had moved to California in 2014, and its general partner was managed by an individual who lived in California and used his California address on official documents such as appellant's federal tax return and Schedule K-1s. Appellant has not shown that it undertook any efforts to determine if it had a filing requirement in California, but instead appears to have assumed it did not despite its obvious presence in California. Accordingly, appellant has not shown reasonable cause for its failure to file a timely return for the 2014 tax year.

HOLDING

Appellant was doing business in California in 2014, and therefore had a filing requirement, and appellant has not shown reasonable cause for its failure to timely file its tax return for 2014.

DISPOSITION

Respondent's action in denying appellant's claim for refund is sustained.

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John O Johnson
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John O. Johnson
Administrative Law Judge

We concur:

DocuSigned by:
8B585BFAC08946D...
Linda C. Cheng
Administrative Law Judge

DocuSigned by:
Jeffrey I. Margolis
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Jeffrey I. Margolis
Administrative Law Judge