

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18083617
SUPERARGO CONSULTING, LLC) Date Issued: July 1, 2019
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_____)
_____)

OPINION

Representing the Parties:

For Appellant Brian K. Banks, C.P.A.

For Respondent: Eric A. Yadao, Tax Counsel III

M. GEARY, Administrative Law Judge: Pursuant to California Revenue and Taxation Code (R&TC) section 19324, Supercargo Consulting, LLC (appellant) appeals from the action of respondent Franchise Tax Board (FTB) denying appellant’s claims for refund totaling \$712 for the 2013, 2014, 2015, and 2016 taxable years.

ISSUE

Is appellant entitled to abatement of the late-payment penalties imposed by FTB for the 2013, 2014, 2015, and 2016 taxable years?

FACTUAL FINDINGS

1. During the period at issue, appellant was a limited liability company (LLC). It filed its Articles of Organization with the California Secretary of State (SOS) on March 14, 2013, indicating it then had an address in Los Angeles, California.
2. On April 23, 2017, FTB sent appellant an “Address Verification Notice,” which asked appellant to confirm its mailing address in California. Appellant did not respond to the request for address verification.
3. On July 24, 2017, FTB sent appellant a notice entitled “Requirements for Limited Liability Companies.” It is not clear that appellant received the document, which would have informed it that, among other things, if it was organized or doing business in

California, or if it was registered with the SOS, it must pay the \$800 annual tax by the 15th day of the fourth month of the taxable year.

4. On September 7, 2017, having found no evidence that appellant filed a 2014 tax return, FTB sent appellant a “Request for Past Due Limited Liability Company Return of Income.” Appellant’s September 23, 2017 response states that appellant was a single-member LLC and had, therefore, filed its return “as part of the individual tax return” on March 21, 2015.
5. FTB sent appellant a “Demand for Tax Return” (Demand) on January 10, 2018. The Demand referred to the 2015 taxable year and demanded a response by February 14, 2018.
6. On or about March 12, 2018, Appellant filed its returns and paid the minimum tax due for the 2013, 2014, 2015, and 2016 taxable years. It thereafter paid late-payment penalties and interest for all the taxable years in question, and it filed claims for refund of those penalties: \$200 for 2013; \$200 for 2014; \$180 for 2015; and \$132 for 2016.
7. FTB issued a Notice of Action denying all the claims. This timely appeal followed.

DISCUSSION

For the taxable years at issue, if an LLC was doing business or organized in California, or was registered with the SOS to do business here, the law required the LLC to file an income tax return and pay the taxes due on or before the due date, which may have been March 15 or April 15 immediately following the close of the taxable year, depending on how the LLC was classified for California tax purposes and the taxable year at issue.¹ (R&TC, §§ 18601, 18633.5(a) & (h), 19001, 23153.)² FTB must impose a late-payment penalty when a taxpayer fails to pay the amount of tax due by the due date, unless the evidence establishes that the failures were due to reasonable cause and not to willful neglect. (R&TC, § 19132.) However, a late-payment penalty will be abated if the taxpayer shows that the late payment was due to reasonable cause and not to willful neglect. (R&TC, § 19132(a).) The taxpayers bear the burden

¹ Generally, FTB allowed an extension to October 15 following close of the taxable year for the filing of the return, but not the payment of the taxes due.

² R&TC sections 18601 and 18633.5 were amended, with the earlier versions applying to returns for taxable years beginning before January 1, 2016, and the later version applicable to returns for taxable years beginning on or after that date.

of proving that both conditions existed. (*Appeal of Roger W. Sleight* (83-SBE-244) 1983 WL 15615.)

To establish reasonable cause, the taxpayer must show the failure to pay timely occurred despite the exercise of “ordinary business care and prudence.” (*Appeal of Sidney G. Friedman and Ellen Friedman*, 2018-OTA-077P.) Unsupported assertions are not sufficient to satisfy a taxpayer’s burden of proof. (*Appeal of Aaron and Eloise Magidow* (82-SBE-274) 1982 WL 11930.) Ignorance or a misunderstanding of California’s tax law does not excuse a failure to follow the law. (*Appeal of LaVonne A. Hodgson* (02-SBE-001) 2002 WL 245667.)

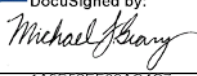
The undisputed evidence shows that appellant filed its returns and paid the taxes due for the taxable years at issue late. Consequently, FTB correctly imposed late-payment penalties. Appellant does not argue, and the evidence does not suggest, that the penalties were incorrectly calculated. We find that they were correctly calculated. Appellant’s sole argument is that it did not know it had a filing requirement. As stated above, appellant did have a filing requirement, which it now acknowledges, and its misunderstanding regarding what the law required of it does not constitute reasonable cause. We find that appellant has not established that its failures to timely pay the taxes for the taxable years at issue were due to reasonable cause and not to willful neglect.

HOLDING


We conclude that appellant is not entitled to abatement of the late-payment penalties imposed by FTB for the 2013, 2014, 2015, and 2016 taxable years.

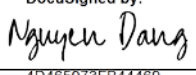
DISPOSITION

We sustain FTB's action denying appellant's claims for refund totaling \$712 for the 2013, 2014, 2015, and 2016 taxable years.

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Michael F. Geary
Administrative Law Judge

We concur:

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Sara A. Hosey
Administrative Law Judge

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Nguyen Dang
Administrative Law Judge