

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
RAW IS SEXY, LLC

) OTA Case No. 18113956
)
) Date Issued: August 22, 2019
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OPINION

Representing the Parties:

For Appellant: James Daloisio

For Respondent: Christopher M. Cook, Tax Counsel

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Raw is Sexy, LLC (appellant) appeals an action by respondent Franchise Tax Board (FTB) in denying appellant’s claim for refund of \$3,200.¹

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

ISSUE

Whether appellant is liable for the annual limited liability company (LLC) tax for 2013, 2014, 2015, and 2016.

FACTUAL FINDINGS

1. Appellant was a California LLC organized in 2011 and dissolved in 2018.
2. After appellant failed to timely pay its LLC tax for 2013 through 2016, respondent sent appellant notices requesting payment.
3. Appellant paid the outstanding balance and requested a refund of the amount paid. Appellant argued that the sole member of the LLC paid the amounts due on behalf of appellant.
4. Respondent denied the claim for refund and this timely appeal followed.

¹ This amount consists of an \$800 annual tax for each of the 2013 through 2016 tax years.

DISCUSSION

R&TC section 17941(b) provides that every LLC is required to pay an annual tax to California for the privilege of doing business in this state if one of three requirements is met: (1) the LLC is “doing business” in this state as defined in R&TC section 23101; (2) the LLC’s articles of organization have been accepted by the California Secretary of State’s (SOS) office; or (3) a certificate of registration has been issued by the California SOS’s office. In general, an LLC is required to pay the annual minimum tax for each taxable year, or part thereof, until a certificate of cancellation of the LLC is filed with the California SOS. (R&TC, § 17941(b)(1).) R&TC section 17941(e) provides in pertinent part that nothing in this subdivision entitles an LLC to receive a refund for any annual taxes or fees previously paid. The R&TC does not provide a “reasonable cause” exception to the annual minimum LLC tax imposed under R&TC section 17941.


Appellant argues that the sole member is entitled to a refund because she mistakenly used her personal funds to pay for the LLC tax for which she was not personally liable. However, appellant’s sole member voluntarily paid the tax. Furthermore, appellant’s sole member is not a party to this appeal and who paid the LLC tax is not relevant to whether the LLC owed the tax. Appellant was issued a certificate of registration by the SOS in 2011 and cancelled its articles of organization with the SOS in 2018. Consequently, appellant was operating in the state during the tax years at issue and owed the annual minimum LLC tax for those years.

HOLDING


Appellant is liable for the minimum LLC franchise tax for 2013, 2014, 2015, and 2016.


DISPOSITION

FTB's action is sustained.

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Josh Lambert
Administrative Law Judge

We concur:

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Jeffrey G. Angeja
Administrative Law Judge

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Jeffrey I. Margolis
Administrative Law Judge