

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**TUPOU COLLEGE ALUMNI**  
**ASSOCIATION OF AMERICA**

---

) OTA Case No. 18032433  
)  
) Date Issued: September 13, 2019  
)  
)  
)

**OPINION**

Representing the Parties:

For Appellant: Saia Fonongaloa, President

For Respondent: David Kowalczyk, Tax Counsel

For Office of Tax Appeals: Ellen L. Swain, Tax Counsel

T. STANLEY, Administrative Law Judge: Pursuant to California Revenue and Taxation Code (R&TC) section 19324, Tupou College Alumni Association of America (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claims for refund of: (1) \$1,178.97 for the 2013 taxable year; (2) \$1,116.54 for the 2014 taxable year; (3) \$1,084.18 for the 2015 taxable year; and (4) \$916.82 for the 2016 taxable year.<sup>1</sup>

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

**ISSUES**

1. Was appellant subject to the minimum franchise tax for 2013 through 2016?
2. Has appellant established reasonable cause to abate the late-filing and late-payment penalties?
3. Is appellant entitled to abatement of the underpayment of estimated tax penalty for 2013 through 2016?

---

<sup>1</sup> The totals include a minimum franchise tax of \$800 for each year; a \$200 late-filing penalty for 2013, 2014, and 2015; a \$72 late-payment penalty for 2016; underpayment of estimated tax penalties for each year; and associated interest. The 2013 total includes a \$50 penalty for failure to file a corporate statement of information.

4. Is appellant entitled to abatement of the penalty for failure to file a corporate statement of information (SOI) for 2013?
5. Has appellant shown that interest should be abated for 2013 through 2016?

#### FACTUAL FINDINGS

1. Appellant registered with the California Secretary of State (SOS) to do business in California as a Domestic Nonprofit Corporation on October 18, 2011.<sup>2</sup>
2. Appellant timely filed a 2012 California Corporate Franchise or Income Tax Return (Form 100.) On the return, appellant marked the corporation as “dissolved” as of December 31, 2011, and indicated it was the final return.
3. FTB sent a Corporation Final Return Information Letter dated October 9, 2013, that included an instruction that the corporation remains subject to the minimum franchise tax, including applicable penalties and interest, until it: 1) files the certificate of dissolution or certificate of surrender, and 2) the SOS accepts it.
4. Shortly thereafter appellant submitted its certificate of dissolution to the SOS. On September 23, 2013, the SOS returned the certificate as incomplete because appellant had not submitted a required clearance certificate from the Office of the Attorney General of California (AG).
5. Appellant did not file an SOI with the SOS in 2013. Upon certification by the SOS that the SOI had not been filed, FTB assessed a \$50 penalty.
6. Appellant sent two certified letters to the AG’s office requesting a clearance certificate, on January 27, 2014, and on April 21, 2014. In a letter dated May 24, 2014, the AG sent appellant a letter requesting additional documents. Appellant did not provide any evidence that it responded to that request.
7. Appellant’s next contact with the AG’s office was in April 2017, when it submitted a request for the clearance certificate on the AG website. The AG issued the clearance certificate on May 1, 2017.
8. The corporation was dissolved, and the dissolution was recorded by the SOS on May 8, 2017.

---

<sup>2</sup> According to FTB’s letter dated December 11, 2017, domestic non-profit corporations may apply for exempt status with FTB. Since FTB has no record of appellant filing for exempt status, FTB treated appellant as a general C corporation for tax purposes.

9. In response to a Demand for Tax Return (Demand) sent to appellant by FTB, appellant filed its 2013 tax return on December 15, 2016. On April 15, 2017, appellant filed its 2014, 2015, and 2016 returns.
10. FTB adjusted appellant's liabilities for all four taxable years. FTB imposed the minimum franchise tax of \$800 for 2013 through 2016, imposed a late-filing penalty for 2013 through 2015, imposed a late-payment penalty for 2016, imposed penalties for the underpayment of estimated tax for 2013 through 2016, and applied interest to the liabilities.
11. After appellant paid the outstanding liability on November 17, 2017, appellant filed a Taxpayer Advocate Assistance Request for relief from taxes, penalties, and interest for 2013 to 2016, on the basis that it ceased doing business in California in 2012 and had difficulty obtaining a clearance certificate from the AG. FTB's Taxpayer Advocate Bureau treated the request as a claim for refund, which it denied for lack of reasonable cause.
12. Appellant filed this timely appeal. Appellant's president asserts that he did not contact the AG's office between April 2014 and April 2017 because he did not wish to interfere with the AG's proceeding and that he was traveling and did not have access to mail.

### DISCUSSION

#### Issue 1 – Was appellant subject to the minimum franchise tax for 2013 through 2016?

Every corporation subject to the franchise tax is required to pay the minimum annual tax of \$800, from the date of its incorporation until it is dissolved or withdrawn. (R&TC, § 23153(d)(1).) California imposes the tax for the privilege of exercising the corporate franchise within this state, and it is not contingent upon the corporation conducting any business or engaging in profitable activities. (*Appeal of Mission Valley East* (74-SBE-039) 1974 WL 2855.) Dissolution occurs when the certificate of dissolution is filed with the SOS. (R&TC, § 23331(a).) To file a certificate of dissolution with the SOS, a non-profit corporation must first obtain a written clearance certificate from the AG, a waiver of objections to the distribution of the corporation's assets, or a written confirmation from the AG that the corporation has no assets. (Corp. Code, § 6615(b).) The SOS may not accept a certificate of dissolution from a

non-profit corporation without the AG's written waiver or confirmation attached thereto. (Corp. Code, § 6615(c).)

Here, appellant registered to do business with the SOS on October 18, 2011. Appellant attempted to dissolve the corporation when it submitted a certificate of dissolution to the SOS in late 2013. Due to appellant's failure to attach a clearance certificate issued by the AG, the SOS declined to file its dissolution. Although appellant attempted to obtain a clearance certificate, first in 2014 and then in 2017, the AG did not issue the clearance certificate until May 1, 2017. The corporation was dissolved, and the dissolution was recorded by the SOS on May 8, 2017.

Appellant raises certain equitable arguments; namely, that the business was "dead" and should not owe tax, and that the SOS failed to issue the required clearance for three years. However, the law requires that appellant pay the minimum franchise tax until it is dissolved, not until it elects to dissolve. (*Appeal of Dimensions Unique, Inc.* (79-SBE-051) 1979 WL 4092.) There is no legal basis for the refund of the minimum franchise tax to a corporation that obtained corporate status. (*Appeal of Mission Valley East, supra.*) Appellant seeks to recover a tax, otherwise validly imposed, based on events extrinsic to the franchise tax law. (*Ibid.*) The minimum franchise tax was properly imposed until the date appellant's dissolution was recorded in 2017.

Issue 2 – Has appellant established reasonable cause to abate the late-filing and late-payment penalties?

For the years at issue, appellant was required to file a tax return on or before the 15th day of the third month following the close of its taxable year. (R&TC, § 18601(a).) For the 2013, 2014, and 2015 taxable years, appellant, which operated on a calendar year basis, neither filed its returns by March 15, 2014, nor did it file returns within the automatic six-month extension allowed by R&TC section 18604. California imposes a penalty of 5 percent of the tax due for each month a tax return is not timely filed, up to a maximum of 25 percent, unless it is shown that the late filing is due to reasonable cause. (R&TC, § 19131.) Appellant did not dispute the amount of the late-filing penalties. Appellant filed its required returns late, and FTB properly imposed the late-filing penalties.

If a taxpayer fails to timely pay its tax liability, a late-payment penalty is imposed at the amount of 5 percent of the unpaid tax and one-half percent per month of the outstanding tax liability, not to exceed 40 months. (R&TC, § 19132.) FTB imposed a late-payment penalty of

\$72<sup>3</sup> for the 2016 taxable year, because although appellant timely filed its 2016 return, it did not pay the tax liability until November 27, 2017. Appellant does not dispute the calculation of the penalty. FTB properly imposed the late-payment penalty for the 2016 taxable year.

Both the late-filing and late-payment penalties may be abated if appellant shows reasonable cause for its untimeliness. Appellant essentially argues that the late filing and payment is due to reasonable cause, based on its attempts in 2014 and 2017 to obtain a clearance certificate from the AG, and because it did not do any business during the years at issue. The taxpayer bears the burden of proof to show that reasonable cause exists to support an abatement of a penalty. (*Appeal of Xie* (2018-OTA-076P), citing *Appeal of Beadling* (77-SBE-021) 1977 WL 3831.) To establish reasonable cause, appellant must show that its failure to file or pay on time occurred despite the exercise of ordinary business care and prudence. (*Appeal of Tons* (79-SBE-027) 1979 WL 4068; *Appeal of Sleight* (83-SBE-244) 1983 WL 15615.) While appellant sought the clearance certificate from the AG on two occasions in 2014, it was notified by FTB that the obligation to file a return and to pay its franchise tax liability remained until a certificate of dissolution was filed with the SOS. Without the clearance from the AG, the SOS could not record appellant's dissolution, and the corporation continued to exist until 2017. Appellant was notified by the AG, in May 2014, that it required additional documentation before issuing its certificate of clearance. Yet, there is no evidence that appellant replied to that correspondence or followed up in any manner prior to April 2017. Ordinary business care and prudence would dictate that appellant should have followed up to complete its dissolution, and to file returns and pay its minimum tax until that occurred. Consequently, appellant has not shown reasonable cause to abate the late-filing and late-payment penalties.

Issue 3 – Is appellant entitled to abatement of the underpayment of estimated tax penalty for 2013 through 2016?

A corporation subject to the franchise tax must pay the estimated tax for each year on or before the 15th day of the fourth month, which may not be less than the minimum franchise tax. (R&TC, §§ 19023, 19025.) A corporation that underpays its estimated tax is liable for a penalty equal to a specified rate of interest applied to the amount of the underpayment. (R&TC, §§ 19142, 19144.) There is no reasonable cause exception to this penalty. (*Appeal of Scanlon*

---

<sup>3</sup> The penalty consists of \$40 (\$800 x .05) + \$32 (\$800 x .005 x 8 months).

(2018-OTA-075P); *Appeal of Weaver Equipment Co.* (80-SBE-048) 1980 WL 4976.) As it is undisputed that appellant made no payments until late 2017, the underpayment of estimated tax penalty was mandatory, and there is no reasonable cause basis to abate it.

Issue 4 – Is appellant entitled to abatement of the penalty for failure to file an SOI for 2013?

Every nonprofit corporation must file an initial statement of information with the SOS and must refile every other year thereafter. (Corp. Code, § 6210.) The SOS certifies to FTB the name of any corporation that fails to file the required statement, and FTB assesses a penalty against the corporation. (R&TC, § 19141; Corp. Code, § 6810.) A penalty assessed under R&TC section 19141 is a final assessment that is due and payable immediately, subject only to the authority of the SOS to waive the penalty. (R&TC, § 19141; Corp. Code, §§ 2204(e) & (f), 6810(f).) Although FTB collects the penalty on behalf of the SOS, there are no provisions in the R&TC or other authority granting FTB authority to abate the penalty imposed under R&TC section 19141. (*Appeal of Triple Crown Baseball LLC* (2019-OTA-025P).) Therefore, we cannot grant relief from the penalty.<sup>4</sup>

Issue 5 – Has appellant shown that interest should be abated for 2013 through 2016?

R&TC section 19101 requires FTB to charge interest when tax is not paid by the original due date. The imposition of interest is mandatory; it is not a penalty, but it is compensation for appellant's use of money after it should have been paid to the state. (*Appeal of Yamachi* (77-SBE-095) 1977 WL 3905.) There is no reasonable cause exception to the imposition of interest. (*Appeal of Moy* (2019-OTA-057P); *Appeal of Goodwin* (97-SBE-003) 1997 WL 258474.) Appellant has not alleged any circumstances under which interest may be abated. (See, e.g., R&TC, §§ 19104, 19112, and 21012.) We conclude appellants are not entitled to interest abatement.

HOLDINGS

1. Appellant is subject to the minimum franchise tax for 2013 through 2016.
2. Appellant has not established reasonable cause to abate the late-filing and late-payment penalties.


---

<sup>4</sup> Only the SOS has the authority to abate the penalty at issue, and there is no evidence that appellant requested that the SOS abate the \$50 penalty. (See Cal. Corp. Code, §§ 2204(e) and (f).)

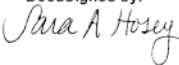
3. Appellant is not entitled to an abatement of the underpayment of estimated tax penalty for 2013 to 2016.
4. FTB does not have authority to abate the SOI penalty for 2013.
5. Appellant is not entitled to abatement of interest.


DISPOSITION

FTB's actions are sustained.

DocuSigned by:  
  
0CC6C6ACCC6A44D  
Teresa A. Stanley  
Administrative Law Judge

We concur:

DocuSigned by:  
  
6D3FE4A0CA514E7...  
Sara A. Hosey  
Administrative Law Judge

DocuSigned by:  
  
8B585BEAC08946D...  
Linda C. Cheng  
Administrative Law Judge