

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 19014167
GREEN PLANET TRADING INC.) Date Issued: September 27, 2019
)
)
)
)
)

OPINION

Representing the Parties:

For Appellant: Andre Huynh
For Respondent: Grace Power, Tax Counsel

D. CHO, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Green Planet Trading Inc. (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing \$800 of additional tax, a late-filing penalty of \$200, a notice and demand penalty (demand penalty) of \$200, a filing enforcement cost recovery fee of \$85, and applicable interest for the 2015 taxable year.

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

ISSUES

1. Whether appellant owed the minimum tax of \$800 for the 2015 taxable year.¹
2. Whether the filing enforcement cost recovery fee was properly assessed.

FACTUAL FINDINGS

1. On March 9, 2015, appellant filed its articles of incorporation with the California Secretary of State (SOS).

¹ Appellant’s sole contention on appeal is that it did not owe the \$800 minimum tax. Appellant has not argued that it had reasonable cause to abate the penalties or whether interest should also be abated. As a result, it is our understanding that appellant is only contesting the penalties and interest as it pertains to the minimum tax such that if it does not owe the minimum tax, it will not owe any of the penalties or interest.

2. Appellant did not file a 2015 Corporation Franchise or Income Tax Return.
3. FTB received information from the SOS that appellant was registered to business in California.
4. On February 14, 2018, FTB issued a Demand for Tax Return (Demand) instructing appellant to file a 2015 California business entity tax return, send a copy of appellant's tax return, or inform FTB if appellant filed a tax return under a different name or account number. The Demand also informed appellant that failure to respond would result in an assessment of a minimum tax, demand penalty, and a cost recovery fee.
5. Appellant did not respond to the Demand and did not file a California Corporation Franchise or Income Tax Return. As a result, FTB issued a Notice of Proposed Assessment (NPA) for the minimum tax of \$800, a late-filing penalty of \$200, a demand penalty of \$200, a filing enforcement cost recovery fee of \$85, and applicable interest.
6. Appellant protested the NPA stating that appellant never obtained the necessary funding to commence operation of the business.
7. Appellant filed a nonprofit certificate of dissolution with the SOS on May 29, 2018.
8. FTB denied appellant's protest and affirmed the NPA. This timely appeal followed.

DISCUSSION

Issue 1 – Whether appellant owed the minimum tax of \$800 for the 2015 taxable year.

R&TC section 23153, subdivisions (a) and (b), provide that every corporation that is incorporated under the laws of this state shall be subject to the minimum franchise tax from the earlier of the date of incorporation, qualification, or commencing business within this state, until the effective date of dissolution. For the 2015 taxable year, the annual minimum franchise tax was \$800. (R&TC, § 23153(d).) However, on or after January 1, 2000, every corporation that incorporates or qualifies to do business in California shall not be subject to the minimum franchise tax for its first taxable year. (R&TC, § 23153(f)(1).)

Here, there is no dispute that appellant incorporated in California and filed its articles of incorporation with the SOS on March 9, 2015. As a result, there can be no dispute that the 2015 taxable year was appellant's first taxable year, and appellant is not liable for the minimum franchise tax for its first taxable year. (See R&TC, § 23153(f)(1).) Instead, appellant's tax liability should have been calculated by multiplying its state net income by the appropriate tax

rate. (See R&TC, § 23151.1(c)(2).) Appellant stated that it never operated its business, which would indicate that it had no income, and FTB has not provided any evidence or argument that appellant had any income. Therefore, we conclude that appellant had no income for the 2015 taxable year, and appellant's tax liability is zero. Because the penalties and interest are calculated from the tax liability (which is zero), the penalties and interest are also reduced to zero.

Issue 2 – Whether the filing enforcement cost recovery fee was properly assessed.

R&TC section 19254(a)(2) states that every person who fails or refuses to make and file a return required by the Corporation Tax Law after formal legal demand shall be liable for a filing enforcement cost recovery fee. This fee is not measured by the tax amount due. Instead, it is based on the actual costs of FTB's enforcement actions, which are specified in the annual Budget Act. (See R&TC, § 19245(b).)

R&TC section 18601(a) provides that every taxpayer subject to the tax imposed by the Corporation Tax Law shall file a return with FTB. Furthermore, "Taxable year" is generally defined as the corporation's annual accounting period, whether it be a calendar or fiscal year. (R&TC, § 24631(b)(1).) However, when the "taxable year" is a period of less than 12 months, the corporation is required to file a short-period return. (R&TC, §§ 24631(b)(3), 24634(a)(2).) The sole statutory exception to this rule is that a corporation shall not be subject to tax if the corporation did no business in this state during the taxable year, and the taxable year was 15 days or less. (R&TC, § 23114(a).) Accordingly, the corporation would not have a filing obligation. (See FTB Publication 1060, *Guide for Corporations Starting Business in California*.)

Here, although appellant may not have been subject to the minimum franchise tax as discussed above, appellant was still subject to the franchise tax measured by its net income. Accordingly, appellant was required to file a return with FTB in accordance with R&TC section 18601(a). It is immaterial that appellant's ultimate tax liability was zero for the 2015 taxable year because the statute requires only that a taxpayer be *subject to* the tax imposed by the Corporation Tax Law. In addition, we also note that appellant incorporated in March of 2015, which resulted in taxable year of less than 12 months. As a result, R&TC section 24634(a)(2) also required appellant to file a return. The sole exception in R&TC section 23114(a) does not apply in this case because appellant's taxable year was greater than 15 days. Therefore, appellant had an obligation to file a return, and when appellant failed to file a return after FTB

issued its Demand, FTB properly assessed the filing enforcement cost recovery fee. Furthermore, there is no provision in the R&TC to abate the filing enforcement cost recovery fee once properly imposed.

HOLDINGS

1. Appellant does not owe the \$800 minimum tax, penalties, and interest.
2. The filing enforcement cost recovery fee was properly assessed.

DISPOSITION

FTB's action is reversed as to the tax, penalties, and interest, but sustained as to the filing enforcement cost recovery fee.

DocuSigned by:
Daniel Cho
7B26A07A7E0A43D...
Daniel K. Cho
Administrative Law Judge

We concur:

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

DocuSigned by:
Patrick J. Kusiak
8E20779F0CD743E...
Patrick J. Kusiak
Administrative Law Judge