

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

In the Matter of the Appeal of:  
**GLG ENTERPRISES, INC.**

) OTA Case No. 18011072  
)  
) Date Issued: May 28, 2019  
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)

**OPINION**

Representing the Parties:

For Appellant: Linda M. Kronseder, President

For Respondent: Maria Brosterhous, Tax Counsel IV

M. GEARY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, GLG Enterprises, Inc. (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing an assessment of \$2,757.90 in tax, penalties totaling \$1,378.94, a \$92 filing enforcement fee, and applicable interest for the taxable year ending July 31, 2014 (TYE 7/14). Appellant waived its right to an oral hearing. Therefore, we decide the matter based on the written record.

**ISSUES**

1. Has appellant shown error in FTB’s proposed assessment of franchise tax for the taxable year ending July 31, 2014 (TYE 7/14)?<sup>1</sup>
2. Is appellant entitled to abatement of the late-filing penalty imposed on it for the TYE 7/14?
3. Is appellant entitled to abatement of the demand penalty imposed on it for the TYE 7/14?
4. Is appellant entitled to abatement of the filing enforcement fee imposed on it for the TYE 7/14?

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<sup>1</sup> FTB’s brief identifies the issue as relating to assessment of the annual minimum tax of \$800. However, the evidence indicates that FTB assessed a tax of \$2,757.90, based on estimated income of \$31,198.

### FACTUAL FINDINGS

1. Appellant filed its California tax return for the TYE 7/13.
2. Appellant filed its certificate of dissolution with the California Secretary of State on April 12, 2014.
3. FTB received information from the Internal Revenue Service (IRS), which indicated that appellant received income of \$31,198 income during the TYE 7/14.
4. On April 22, 2016, FTB sent appellant a “Demand for Tax Return” (Demand) which informed appellant it was required to file a California income tax return until it formally dissolves, withdraws, or cancels through the Secretary of State. The Demand instructed appellant to file its return for the TYE 7/14, provide information to show that it had already filed the return, or provide information to show that it had no filing requirement for the TYE 7/14, by May 25, 2016. Appellant did not timely respond to the Demand.
5. On June 24, 2016, FTB sent appellant a “Notice of Proposed Assessment” (NPA) of \$2,757.90 in tax, a 25-percent late-filing penalty of \$689.47, a 25-percent demand penalty of \$689.47, a \$92 filing enforcement fee, and interest.
6. Appellant filed a timely protest, which FTB denied, affirming the assessment and issuing a “Notice of Action on Proposed Assessment” of the tax and penalties referred to in the NPA, plus interest. This timely appeal followed.

### DISCUSSION

#### Issue 1 - Has appellant shown error in FTB’s proposed assessment of franchise tax for the TYE 7/14?

As relevant here, every corporation is subject to an annual franchise tax of at least \$800 for every year that it is incorporated under the laws of this state, qualified to transact intrastate business in this state, or doing business in this state. (R&TC, § 23153.) The obligation to pay the tax begins on the date of incorporation, qualification, or commencement of business within this state, and it continues until the effective date of dissolution or withdrawal as provided in R&TC Section 23331 or, if later, the date the corporation ceases to do business within the limits of this state. (R&TC, § 23153(a).) The effective date of dissolution is the date on which the certificate of dissolution is filed with the Secretary of State. (R&TC, § 23331.)

The FTB's determination is presumed to be correct, and a taxpayer has the burden of proving error. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509, 514; *Appeal of Michael E. Myers*, (2001-SBE-001) 2001 WL 37126924.) California Code of Regulations, title 18, section 30705(c) states that unless there is an exception provided by law, "the burden of proof requires proof by a preponderance of the evidence."<sup>2</sup> 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.)

Appellant asserts that it ceased doing business on July 31, 2013, and that it filed its final tax return for the TYE July 31, 2013. It concedes that it did not file its certificate of dissolution with the Secretary of State until April 14, 2014, but it argues that the certificate states it ceased doing business on July 31, 2013, and that it should not be taxed for periods after it had ceased doing business.

FTB alleges that it received information from the IRS indicating that appellant had income following July 31, 2013. It argues that, regardless of what the certificate states about when the corporation ceased doing business, the obligation to pay taxes continued for the TYE 7/14 because appellant did not file the dissolution certificate until April 12, 2014.

Appellant filed its certificate of dissolution over eight months into the TYE 7/14. Regardless of whether appellant did business after July 31, 2013, and even if it earned no income from business operations after that date, the obligation to pay at least the minimum tax continued into the next taxable year, 2014, because appellant did not file its certificate of dissolution with the Secretary of State until over eight months into TYE 7/14. (R&TC, §§ 23331, 23153; *Appeal of Truck-A-Way Produce Express, Inc.*, 69-SBE-015, Feb. 26, 1969<sup>3</sup>.)

Furthermore, the evidence indicates appellant received income during TYE 7/14. FTB obtained information from the IRS that appellant received income of \$31,198 during TYE 7/14. Appellant has not made an argument or provided evidence to show that the federal information is erroneous. Based on the undisputed evidence, we find that appellant is not entitled to reduction or abatement of the franchise tax imposed on appellant for the TYE 7/14.

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<sup>2</sup> A preponderance of evidence means that the taxpayer must establish by documentation or other evidence that the circumstances it asserts are more likely than not to be correct. (*Concrete Pipe and Products of California, Inc., v. Construction Laborers Pension Trust for Southern California* (1993) 508 U.S. 602, 622.)

<sup>3</sup> Parallel citation not available.

Issue 2 - Is appellant entitled to abatement of the late-filing penalty imposed for the TYE 7/14?

For the period at issue and as relevant here, a corporation was required to file its return and pay the taxes due on or before the 15th day of the third month first following close of its taxable year. (See R&TC, §§ 18601, 19001.<sup>4</sup>) Although there are provisions that allow extensions of time within which to file a return (see R&TC, §§ 18567 and 18604), there was no extension in effect for the taxable year at issue. The duty to file a timely return is a nondelegable duty of the individual taxpayer. (*United States v. Boyle* (1985) 469 U.S. 241, 252.) Not knowing or fully understanding California's tax law does not excuse a failure to follow the law. (*Appeal of LaVonne A. Hodgson* (02-SBE-001) 2002 WL 245667.)

R&TC section 19131 requires FTB to impose a late-filing penalty when a taxpayer does not file its return on or before its due date, unless the taxpayer shows that the late filing was due to reasonable cause and not due to willful neglect.<sup>5</sup> To establish reasonable cause, the taxpayer must show the failure to timely file occurred despite the exercise of "ordinary business care and prudence." (*Appeal of Sidney G. Friedman and Ellen Friedman*, 2018-OTA-077P, August 23, 2018.)<sup>6</sup> Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Aaron and Eloise Magidow, supra.*) Whether appellant timely filed its return and, if it did not, whether its failure to do so was due to reasonable cause are questions of fact on which appellant has the burden of proof. (*Appeal of La Salle Hotel Company* (66-SBE-071) 1966 WL 1412.)

FTB argues that imposition of the late-filing penalty is mandatory, and that the penalty can be thereafter abated only on a showing that appellant's failure to file on time was due to reasonable cause.

Appellant's sole argument is that it did not believe it had a filing requirement for TYE 7/14. Its appeal letter states only that appellant believed the proposed assessment was incorrect because its Articles of Dissolution, which were filed on April 12, 2014, indicated the corporation ceased doing business on July 31, 2013. As stated above, a mistaken belief regarding what the

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<sup>4</sup> Section 18601 was amended effective January 1, 2017. We apply the earlier version here.

<sup>5</sup> There is nothing in the evidence suggestive of willful neglect, and FTB does not argue otherwise, so we will make no further mention of that element.

<sup>6</sup> Precedential opinions issued by the Office of Tax Appeals can be seen on its website at <https://ota.ca.gov/opinions/>.

law requires does not establish reasonable cause, and appellant has not made any other argument or offered evidence to prove that its failure to timely file its return for the TYE 7/14 was due to reasonable cause. Even after appellant received FTB's opening brief, it did not otherwise attempt to allege or prove reasonable cause. Consequently, we find that appellant is not entitled to abatement of the late-filing penalty imposed for the TYE 7/14.

Issue 3 - Is appellant entitled to abatement of the demand penalty imposed for the TYE 7/14?

The Franchise Tax Board may add a penalty of 25 percent of the amount of tax determined if a taxpayer fails to make and file a tax return after notice and demand by the FTB, unless the taxpayer establishes the failure is due to reasonable cause and not willful neglect. (R&TC, §19133.)

The evidence shows that appellant did not timely respond to the demand. The record does not indicate the TYE 7/14 return has been filed to date, and appellant has not made an argument or provided evidence to show that its failure to file was due to reasonable cause and not willful neglect. Based on the evidence, we find that appellant is not entitled to abatement of the demand penalty imposed for the TYE 7/14.

Issue 4 - Is appellant entitled to abatement of the filing enforcement fee imposed for the TYE 7/14?

R&TC section 19254 requires FTB to impose collection and filing enforcement cost recovery fees when circumstances warrant. FTB imposes a filing enforcement cost recovery fee when a non-exempt taxpayer fails to file a tax return within 25 days after a formal legal demand to file a return is mailed to the taxpayer. The amount of the fee is set annually to reflect actual collection and enforcement costs. The statute does not allow for abatement of or relief from the fee, even on a showing that the failure to pay was due to reasonable cause. (See *Appeal of Michael E. Myers, supra.*)


FTB issued a demand on April 22, 2016. Appellant did not file a return within 25 days after the demand was mailed to appellant. Therefore, FTB properly imposed the filing enforcement fee. Relief is not available. Consequently, we conclude that appellant is not entitled to abatement of the filing enforcement fee imposed for the TYE 7/14.

HOLDINGS

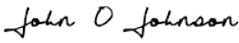
1. Appellant has not shown error in FTB’s proposed assessment of franchise tax for the TYE 7/14.
2. Appellant is not entitled to abatement of the late-filing penalty imposed on it for the TYE 7/14.
3. Appellant is not entitled to abatement of the demand penalty imposed on it for the TYE 7/14.
4. Appellant is not entitled to abatement of the filing enforcement fee imposed on it for the TYE 7/14.


DISPOSITION

We sustain FTB’s proposed assessment.

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 Michael F. Geary  
 Administrative Law Judge

We concur:

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 John O. Johnson  
 Administrative Law Judge

DocuSigned by:  
  
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 Linda C. Cheng  
 Administrative Law Judge