OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	) OTA Case No. 18011077
	)
GEF OPERATING, INC.	) Date Issued: May 9, 2019
	)
	)
	)

OPINION

Representing the Parties:

For Appellant: Leslie A. Powers

For Respondent: Erin Dendorfer, Tax Counsel III

For Office of Tax Appeals: Neha Garner, Tax Counsel III

P. KUSIAK, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, GEF Operating, Inc. (appellant) appeals an action by the Franchise Tax Board (FTB) affirming a proposed assessment of tax of $800, a late filing penalty of $200, a demand penalty of $200, and a filing enforcement fee of $92, plus interest, for the 2011 tax year.

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

ISSUES

1. Whether appellant was doing business in California.
2. Whether appellant has established reasonable cause for failing to timely file a tax return.
3. Whether appellant has established reasonable cause for failing to timely reply to the Demand for Tax Return (Demand).
4. Whether appellant has shown that the filing enforcement fee should be abated.
5. Whether appellant has shown that interest may be abated.

FACTUAL FINDINGS

1. Appellant is a Washington corporation with its headquarters and principal place of business in Ephrata, Washington.
2. Appellant did not file a timely California tax return for its taxable year from December 1, 2011, through November 30, 2012 (2011 tax year.)[1]
3. Appellant was the sole general partner in two limited partnerships in California, Jacob LP and Hiatt Honey CA LP, and the sole general partner of GEF Holdings LP, a limited partnership based in Washington. Jacob LP and Hiatt Honey CA LP had 100 percent of their real and tangible personal property in California. It appears that appellant is also the sole general partner/managing member of Archer, LLC, and that GEF Holdings is the sole limited partner of Archer, LLC, with a ninety-nine percent (99%) capital interest.
4. Schedule K-1 information for Jacob LP indicates that it was in the business of owning and renting California real estate during the year at issue, and appellant stated in its appeal that "Jacob, LP… is a California limited partnership conducting all of its business in California." Schedule K-1 information for Hiatt Honey CA LP indicates that it was a California-based apiary business during the year at issue. California partnership returns filed by Jacob LP and Hiatt Honey CA LP for the tax year at issue indicated each had 5 partners, with interests as follows:

Jacob LP				
Appellant	General partner	Profit – 0%	Losses – 0%	Capital – 1%
GEF Holdings LP	Limited partner	Profit – 0%	Losses – 0%	Capital – 99%
Jerald Hiatt	Limited partner	Profit – 0%	Losses – 0%	Capital - 0%
Christopher Hiatt	Limited partner	Profit – 50%	Losses – 50%	Capital – 0%
Bryan Hiatt	Limited partner	Profit – 50%	Losses – 50%	Capital – 0%

[1] FTB noted that appellant files its federal tax returns on a fiscal year basis from December 1 through November 30 and is required to use the same tax period for California tax purposes pursuant to R&TC section 24632. FTB noted that appellant's Notice of Appeal refers to the 2011 tax year as "tax year 2012," whereas FTB refers to the same period as "tax year 2011." We will refer to the tax year at issue as the 2011 tax year.

Hiatt Honey CA LP				
Appellant	General partner	Profit – 0%	Losses – 0%	Capital – 1%
GEF Holdings LP	Limited partner	Profit – 0%	Losses – 0%	Capital – 99%
Jerald Hiatt	Limited partner	Profit – 0%	Losses – 0%	Capital - 0%
Christopher Hiatt	Limited partner	Profit Start 38.9767% End 12.1160%	Losses Start 38.9767% End 12.1160%	Capital – 0%
Bryan Hiatt	Limited partner	Profit Start 61.0234% End 87.8840%	Losses Start 61.0234% End 87.8840%	Capital – 0%

5. For the tax year at issue, GEF Holdings LP reported that at the beginning of the tax year at issue appellant had a 1 percent share of capital, 53.50901 percent share of profits and 53.50901 percent share of losses. GEF Holdings LP also reported appellant's interest in profits and losses was reduced to 36.4996 percent at the end of 2011.

6. On October 9, 2015, FTB issued a Demand to appellant for the 2011 tax year requiring appellant to respond either by filing a tax return or by completing forms to show whether it had a filing requirement by November 18, 2015. Appellant responded to the Demand on October 14, 2015, stating that it disagreed that it had a California filing requirement. Appellant stated that FTB made the same demand for its 2010 tax return and subsequently withdrew is proposed assessment. Appellant attached an August 26, 2015 letter from FTB withdrawing its proposed assessment for the 2010 tax year. On this basis, appellant asserted that the matter has already been reviewed and it was determined that it did not have a filing requirement. Appellant argued that nothing has changed from the 2010 tax year and that it did not conduct any business in California. However, the record shows that, on or about February 17, 2015, appellant filed a California tax return for the 2010 tax year. On that tax return, appellant reported it had no net income subject to California tax and self-assessed the minimum tax of $800 and a penalty for underpayment of estimated tax in the amount of $9. Appellant further indicated on the return that it first began doing business in California or receiving California income from California sources on January 1, 2011. Thus, it appears FTB withdrew its proposed assessment for the 2010 tax year because appellant filed a tax return rather than, as

appellant contended, because of a determination that appellant did not have a filing requirement.

7. On November 9, 2015, FTB replied to appellant's October 14, 2015 letter rejecting appellant's position that it was not required to file a California tax return for the 2011 year. FTB stated that when a corporation is either a general partner of a partnership or a member of an LLC that is "doing business" in California, the corporation is also considered to be "doing business" in California. Accordingly, FTB stated that appellant must file a tax return by December 3, 2015. FTB warned that, if appellant did not file a tax return by December 3, 2015, it would estimate appellant's tax and might also impose penalties, including a demand penalty.

8. Appellant did not file a return for the 2011 year. Accordingly, FTB issued a Notice of Proposed Assessment (NPA) to appellant for the 2011 tax year on April 14, 2016, proposing to assess the minimum corporate franchise tax of $800, a demand penalty of $200, a late filing penalty of $200, and a filing enforcement fee of $92, plus interest.

9. On June 13, 2016, appellant timely protested the NPA. In its protest, appellant argued that it does not do business in California by acting as a general partner in a limited partnership doing business in California. Appellant also argued that California's imposition of the tax would violate the United States Constitution.

10. On December 1, 2016, FTB issued a Notice of Action (NOA), affirming the NPA. This timely appeal followed.

DISCUSSION

Issue 1 - Whether appellant was doing business in California.

FTB's determination of tax is presumed to be correct, and a taxpayer has the burden of proving error. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; *Appeal of Aaron and Eloise Magidow* (82-SBE-274) 1982 WL 11930.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Aaron and Eloise Magidow, supra*.) FTB's determinations cannot be successfully rebutted when the taxpayer fails to provide credible, competent, and relevant evidence as to the issues in dispute. (*Appeal of Oscar D. and Agatha E. Seltzer* (80-SBE-154) 1980 WL 5068.)

R&TC section 23153(b)(3) provides that a corporation "doing business" in California is required to pay the annual minimum franchise tax. For the 2011 tax year, the amount of this tax was $800. (R&TC, § 23153(d)(1).)

"Doing business" is defined as "actively engaging in any transaction for the purpose of financial or pecuniary gain or profit." (R&TC, § 23101(a).) R&TC section 23101 was amended for taxable years beginning on or after January 1, 2011. In addition to the definition provided in R&TC section 23101(a), for taxable years beginning on or after January 1, 2011, a taxpayer is "doing business" in California if any of the following conditions are satisfied: (1) the taxpayer is organized or commercially domiciled in California; (2) sales of the taxpayer in California exceed the lesser of $500,000 or 25 percent of the taxpayer's total sales; (3) the real property and tangible personal property of the taxpayer in California exceed the lesser of $50,000 or 25 percent of the taxpayer's total real property and tangible property; or (4) the amount paid in California by the taxpayer for compensation exceeds the lesser of $50,000 or 25 percent of the total compensation paid by the taxpayer. (R&TC, § 23101(b).) The taxpayer's pro rata shares of payroll, property and sales from partnerships and pass-through entities must be included in the determination. (R&TC, § 23101(d).)

Every general partner has the right to manage and conduct the activities of the partnership, and the activities of a partnership are attributable to a general partner. (See *Appeal of H. F. Ahmanson* (65-SBE-013) 1965 WL 1350 (*Ahmanson*); *Appeals of Amman & Schmidt Finanz AG, et al.* (96-SBE-008) 1996 WL 281551 (*Amman*))[2]. A corporate general partner is considered to have earned income and losses from the same sources that such income and losses were realized by the partnership. (See *Appeal of Custom Component Switches, Inc.* (77-SBE-009) 1977 WL 3820.)

California Corporations Code section 15904.06(a) provides that absent restrictions in the partnership agreement, any matter relating to the activities of a limited partnership may be

[2] *Ahmanson* stated in part that a partner was "doing business" wherever the partnership was "doing business." However, the Board of Equalization in *Amman* distinguished between the limited rights of limited partners and the broad rights of general partners. *Amman* found that, while it was "arguably true" that general partners were "doing business" where the partnership was "doing business," a limited partner would not be deemed to do business wherever the partnership was "doing business." Where a general partner is concerned, the general rule, as stated in *Ahmanson*, applies such that the general partner is deemed to be engaged in business where the partnership is engaged in business. This rule is consistent with analogous federal authority. (See *Unger v. Commissioner* (D.C. Cir. 1991) 936 F.2d 1316 [nonresident taxable based on limited partnership interest in partnership operating in United States].)

exclusively decided by the general partner. California Corporations Code section 15904.04(a) provides in relevant part that "general partners are liable jointly and severally for all obligations of the limited partnership unless otherwise agreed by the claimant or provided by law."

Here, appellant is a Washington corporation with its headquarters and principal place of business in Ephrata, Washington. Appellant is the sole general partner of Jacob LP and Hiatt Honey CA LP, two limited partnerships that were conducting business in California. Appellant argues that it was not physically present in California during the 2011 tax year and that it rendered management services from Washington. It appears that appellant earned almost $400,000 of its income by providing "management services." Appellant states that it performs office services for Jacob LP and Hiatt Honey CA LP, including bookkeeping, accounting, clerical, offsite management, strategic planning, budgeting, vendor and customer communication as well as solicitation, and planning. Appellant asserts that on-site services in California are executed through personnel who are either employees, or are limited partners performing the services in that capacity. Appellant also contends that it provides these services from Washington and that it did not receive California source income from the provision of those services.

However, it has been long established that a general partner of a limited partnership is "doing business" wherever the limited partnership is conducting its business. (*Amman, supra*.) Appellant, as the general partner of Jacob LP and Hiatt Honey CA LP, had the right to manage and conduct the activities of these limited partnerships and was liable for their debts. Consequently, these activities were attributed to appellant. (See *Ahmanson, supra*; *Amman, supra*.) The record clearly shows that Jacob LP and Hiatt Honey CA LP were actively engaging in transactions in California for the purpose of financial or pecuniary gain or profit. Therefore, they were doing business in California under R&TC section 23101(a). Even though appellant was not physically present in California, because it was the general partner of limited partnerships that were doing business in California under R&TC section 23101(a), appellant is considered to be "doing business" in California. Therefore, because appellant's California activities met the test for "doing business" under R&TC section 23101(a), appellant is subject to the filing requirements and minimum tax regardless of whether appellant meets any of the threshold conditions provided under R&TC section 23101(b).

Appellant argues that R&TC section 23153(b) excepts corporations from the tax under

R&TC section 23153(a) to the extent barred by the California Constitution. R&TC section 23153(b) provides, in part, "[u]nless expressly exempted by this part or the California Constitution, subdivision (a) [which imposes the minimum franchise tax] shall apply to each of the following: (3) Every corporation that is doing business in this state." This provision, by its terms, requires express language in the California Constitution providing an exemption from the tax. Appellant has not identified any provision of the California Constitution that expressly applies to exempt appellant from the minimum franchise tax.

Appellant argues that the provisions of R&TC section 23101(b), applicable for the 2011 taxable year, provide a minimum physical presence to establish substantial nexus in California. Under this theory of the provisions of R&TC section 23101(b), if none of the thresholds articulated in paragraphs (1), (2), or (3) of subdivision (b) are satisfied, a taxpayer is not doing business and therefore not subject to tax based on doing business.

We first note that appellant has not established the factual predicate to its argument, which is that its California sales, property, and payroll were less than the thresholds articulated in subdivision (b) of R&TC section 23101.[3] To determine whether appellant's California connections fell below those thresholds, appellant must consider its distributive share of sales, property, and payroll of Jacob LP, Hiatt Honey CA LP, Archer, LLC,[4] and any other partnerships in which it has an interest (as well as its share of any S corporation activities). (R&TC, § 23101(d).)

Even if appellant had shown that none of the thresholds set forth in R&TC section 23101(b) were exceeded, we disagree with appellant's apparent view that subdivision (b) of R&TC section 23101 provides an effective safe harbor from the general definition of "doing business" where a taxpayer's California activities fall below the identified thresholds. If the Legislature wished to eliminate the general "doing business" definition in subdivision (a), it

[3] Among other things, appellant's calculations do not include its direct and indirect interests in Archer LLC, which appears to have had California operations. Appellant's calculations also seem to assume that its distributive share of GEF Holdings LP is equal to its one percent capital interest in that partnership, when appellant also shared at least a 36 percent interest in profits and losses of that partnership.

[4] Appellant's 2010 corporation return for 2010 included the following statement: "GEF Operating Inc. is a general partner of Hiatt Honey CA LP. GEF Operating Inc. is also a general partner of Archer LLC. These entities have California operations and income. This income is completely allocated to California owners. No California income is allocated to GEF Operating, Inc. GEF Operating provides overall management and support services, but those services are performed in the State of Washington and the income of GEF Operating Inc. is derived from income earned in Washington. GEF Operating does not have any California income and does not provide services in California."

could have done so, but it did not. Appellant's interpretation would implicitly repeal the provisions of R&TC section 23101(a).

"[A]ll presumptions are against a repeal by implication. [Citations.]" (*Flores v. Workmen's Comp. Appeals Bd*. (1974) 11 Cal.3d 171, 176 113 Cal. Rptr. 217, 520 P.2d 1033.) Absent an express declaration of legislative intent, an implied repeal should be found "only when there is no rational basis for harmonizing the two potentially conflicting statutes [citation], and the statutes are `irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operation.'" (*In re White* (1969) 1 Cal.3d 207, 212 81 Cal. Rptr. 780, 460 P.2d 980.)

Subdivision (a) of R&TC section 23101 is not inconsistent or irreconcilable with the provisions of R&TC section 23101, subds. (b) through (d), that were operative taxable years beginning January 1, 2011. In fact, given the explicit language of revisions made for 2011 that reference the distributive and pro rata share of sales, payroll and property, instead of limiting the scope of R&TC section 23101, subdivision (a), the language of the changes made and the legislative history suggest that the purpose of those revisions was to broaden the scope of "doing business" to explicitly encompass owners of pass-through entities with economic presence in California.

Subdivision (b) was initially added to R&TC section 23101 by ch. 17 (SB 15), Stat. 2009, 3rd Extra Sess. Feb. 20, 2009. Addressing a fiscal emergency, this legislation also revised rules for the sales factor in R&TC sections 25120 and 25135 and, for the first time, authorized a single-sales factor apportionment method on an elective basis. This legislation also revised the rules for determining when sales of other than tangible property are in California.[5] For example, sales from services are in California to the extent the purchaser of the service received the benefit of the service in California.[6] While the legislation established minimum thresholds for nexus on the basis of economic presence in this state, there is no textual basis or legislative history to suggest that the addition of subdivision (b) altered or revised "doing business" under subdivision (a) of RTC section 23101.[7]

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[5] See R&TC section 25128.5, as added by section 11, and R&TC section 25136, as amended by section 13 and as added by section 14, ch. 17 (SB 15), Stat. 2009, 3rd Extra Sess. Feb. 20, 2009.

[6] See R&TC section 25136, as added by section 14, ch. 17 (SB 15), Stat. 2009, 3rd Extra Sess. Feb. 20, 2009.

[7] Senate Floor Analysis SBX3 15, 2/14/2009. This legislation "[a]llows most multi-state businesses to apportion income to California using only their percentage of sales in California as an alternative to using the current apportionment methodology, which averages a business's proportion of sales, property, and payroll in

Appellant also argues that Jacob LP was not operated by its general partner but was instead operated by "the equitable owners of the limited partnership." However, appellant does not provide any supporting evidence or establish under what authority those "equitable owners" were able to manage Jacob LP and Hiatt Honey CA LP.[8] To the extent appellant argues that it was not, in fact, a general partner, the argument is contradicted by the appeal record.

Appellant also argues that the California Court of Appeal's recent decision in *Swart Enterprises, Inc. v. California Franchise Tax Board* (2017) 7 Cal.App.5th 497 (*Swart*), supports its position. In *Swart*, the court held that an out-of-state taxpayer was not "doing business" in California because it held a small (0.2 percent), non-managing member interest in a manager-managed limited liability company (LLC) investment fund. (*Id*.) The court reasoned that the taxpayer was not "doing business" in California because it had no interest in specific property of the LLC, was not personally liable for the LLC's obligations, played no role in the LLC's management and had no right to, and could not act as an agent for the LLC or bind the LLC in any way. (*Id*.) In essence, the taxpayer in that case was more akin to a limited partner. (*Id*.) That case is not applicable here because, unlike the taxpayer in *Swart*, appellant is the sole general partner with the ability and legal responsibility to manage two California-based partnerships.

Appellant contends that California lacks a sufficient nexus to tax appellant upon the business it conducted in this state as the general partner of two California-based limited partnerships and that appellant did not receive the benefit of "enjoyment of the facilities of the

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California (with the sales factor double-weighted). This provision will be effective starting in tax year 2011 and is permanent.

. . . . The measure also includes the following provisions necessary to clarify and appropriately apply apportionment of business income using only sales:

A. Economic Nexus. Since sales is the easiest factor for firms to manipulate for tax purposes (by choosing the location of the transaction or setting up shell buyers, for example). The bill amends Revenue and Taxation Code Section 23101 to clarify and specify that companies that operate in the state or make sales in the state are doing business in California and subject to California tax. The amendment also includes de minimus [*sic*] exemptions. However, because of federal law, nexus does not currently, and would not under this measure, extend to companies whose only connection is that they sell tangible property in the state."

[8] Corporations Code section 15903.02, provides that "[a] limited partner does not have the right or the power as a limited partner to act for or bind the limited partnership." Furthermore, Corporations Code section 15903.03, provides, in part, that "[i]f a limited partner participates in the control of the business without being named as a general partner, that partner may be held liable as a general partner only to persons who transact business with the limited partnership with actual knowledge of that partner's participation in control and with a reasonable belief, based upon the limited partner's conduct, that the partner is a general partner at the time of the transaction." Participation in the control of these California limited partnerships by equitable owners who were limited partners in the limited partnership could implicate the extent of their limited liability as limited partners.

forum state." However, appellant did benefit from California's economic marketplace and from the services provided by the California government. Records obtained from the California Employment Development Department (EDD) show that Hiatt Honey CA LP and its general partner shared the same Federal Employer Identification Number and reported 12 employees in California during the 2011 tax year. Appellant also states that two of its directors are California residents and that it paid payroll to California residents. Appellant's registration with the Washington Secretary of State lists Jerry Hiatt as one of appellant's "governors." Jerald Hiatt has a California address and is the California registered agent for Jacob LP and Hiatt Honey CA LP. Appellant also argues that it lacked nexus with California because it was not physically present in California and did not use California facilities, however, appellant was the general partner operating two California businesses, and appellant's California directors provided "onsite services." As a result, these entities were utilizing the services California offers to any business operating here and appellant as the sole general partner benefited from the services California provided to the limited partnerships it managed.

Appellant argues that the problem with the minimum tax is that it is not allocated or apportioned, relying on *Northwest Energetic Services, LLC v. Cal. Franchise Tax Bd,* (2008) 159 Cal.App.4th 841. That case invalidated the imposition of the fee imposed under R&TC section 17942 on a company that conducted no business in California.

Issue 2 - Whether appellant has established reasonable cause for failing to timely file a tax return.

R&TC section 19131 provides that a late filing penalty shall be imposed when a taxpayer fails to file a tax return on or before its due date, unless the taxpayer establishes that the late filing was due to reasonable cause and was not due to willful neglect. The penalty is specified as 5 percent of the tax due for each month that a valid tax return is not filed after it is due, not to exceed 25 percent of the tax. (R&TC, § 19131(a).) To establish reasonable cause, the taxpayer "must show that the failure to file timely returns occurred despite the exercise of ordinary business care and prudence, or that cause existed as would prompt an ordinary intelligent and prudent businessman to have so acted under similar circumstances." (*Appeal of Howard G. and Mary Tons* (79-SBE-027) 1979 WL 4068.) Even if the taxpayer is unaware of a filing requirement, ignorance of the law is not an excuse for failing to file a timely return. (*Appeal of*

J. Morris and Leila G. Forbes (67-SBE-042) 1967 WL 1384; *Appeal of Diebold, Incorporated* (83-SBE-002) 1983 WL 15389.)

Here, appellant has not filed a 2011 California tax return. Appellant argues that the late filing penalty should be abated because it believed it was not required to file. However, even if a taxpayer is unaware of a filing requirement, ignorance of the law does not excuse compliance with statutory requirements. (*Appeal of Diebold, Incorporated, supra*.) Furthermore, appellant implies that it relied on the advice of a tax professional but has not provided any specific information to establish that prior to the due date of its return, it consulted with a qualified tax professional and relied on advice that it had no California tax filing requirement. (*See Appeal of Philip C. and Anne Berolzheimer* (86-SBE-172) 1986 WL 22860.) Furthermore, a review of the record does not show any facts and circumstances that would warrant a finding of reasonable cause.

Issue 3 - Whether appellant has established reasonable cause for failing to timely reply to the Demand.

California imposes a penalty for the failure to file a return or to provide information upon the FTB's demand to do so, unless reasonable cause prevented the taxpayer from responding to the demand. (R&TC, § 19133.) The burden of proving "reasonable cause" for the failure to file upon demand is on the taxpayer. (*Appeal of David A. and Barbara L. Beadling* (77-SBE-021) 1977 WL 3831.) An appellant's failure to respond to a demand must be such that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Howard G. and Mary Tons, supra*.)

Here, FTB informed appellant in the Demand dated November 9, 2015, that appellant is required to file a return and may be subject to the demand penalty if FTB did not receive a return from appellant within the prescribed period in the Demand. Appellant has not provided any specific argument regarding the demand penalty and a review of the record does not show any facts and circumstances that would warrant a finding of reasonable cause.

Issue 4 - Whether appellant has shown that the filing enforcement fee should be abated.

R&TC section 19254 provides that, if the FTB mails a formal legal demand for a tax return to a taxpayer, a filing enforcement cost recovery fee is required to be imposed when the taxpayer fails or refuses to file the return within the prescribed time period. Once properly

imposed, there is no provision in the R&TC which would excuse the FTB from imposing the filing enforcement cost recovery fee for any circumstances, including reasonable cause. (R&TC, § 19254; *Appeal of Michael E. Myers* (2001-SBE-001) 2019 WL 1187160.) Here, FTB informed appellant in the Demand that appellant may be subject to the filing enforcement fee if appellant did not file a tax return for the 2011 tax year. FTB did not receive a return from appellant within the prescribed period in the Demand. Therefore, FTB properly imposed the filing enforcement fee of $92 and we have no basis to abate this fee.

Issue 5 - Whether appellant has shown that interest may be abated.

R&TC section 19101 provides that taxes are due and payable as of the original due date of the taxpayer's return (without regard to extension). If tax is not paid by the original due date or if the FTB assesses additional tax and that assessment becomes due and payable, the taxpayer is charged interest on the resulting balance due, compounded daily. (R&TC, § 19101.) Interest is not a penalty but is merely compensation for a taxpayer's use of the money. (R&TC, § 19101(a); *Appeal of Amy M. Yamachi* (77-SBE-095) 1977 WL 3905; *Appeal of Audrey C. Jaegle* (76-SBE-070) 1976 WL 4086.) There is no reasonable cause exception to the imposition of interest. (*Appeal of Audrey C. Jaegle, supra*.)

Under R&TC section 19104, FTB may abate all or a part of any interest on a deficiency to the extent that interest is attributable in whole or in part to any unreasonable error or delay committed by FTB in the performance of a ministerial or managerial act. (R&TC, § 19104(a)(1).) An error or delay can only be considered when no significant aspect of the error or delay is attributable to the appellant and after FTB has contacted the appellant in writing with respect to the deficiency or payment. (R&TC, § 19104(b)(1).) Jurisdiction for interest abatement is limited by statute to a review of FTB's determination for an abuse of discretion. (R&TC, § 19104(b)(2)(B).) To show an abuse of discretion, the appellant must establish that, in refusing to abate interest, FTB exercised its discretion arbitrarily, capriciously, or without sound basis in fact or law. (*Woodral v. Commissioner* (1999) 112 T.C. 19, 23.)

Appellant has not alleged that there was any unreasonable error or delay committed by FTB in the performance of a ministerial or managerial act. As such, FTB has not abused its discretion in refusing to abate interest. Further, there is no reasonable cause exception to the imposition of interest. (*Appeal of Audrey C. Jaegle, supra*.) Accordingly, there is no basis for interest abatement.

HOLDINGS

1. Appellant was doing business in California under R&TC section 23101 because it was a general partner in at least two limited partnerships that were doing business in California.
2. Appellant failed to establish reasonable cause for failing to timely file a tax return.
3. Appellant failed to establish reasonable cause for failing to timely reply to the Demand.
4. Appellant has failed to show that the collection fee should be abated.
5. Appellant has failed to show that interest should be abated.

DISPOSITION

FTB's action is sustained.

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

We concur:

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Grant Thompson
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Grant S. Thompson
Administrative Law Judge

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