

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18093817
GLOBAL CONSULTANT GROUP LLC)
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OPINION

Representing the Parties:

For Appellant: Firoozeh Tavakolynia

For Respondent: Joel Smith, Tax Counsel

J. MARGOLIS, Administrative Law Judge: Pursuant to California Revenue and Taxation Code (R&TC) section 19324, Global Consultant Group LLC (appellant) appeals an action by the respondent Franchise Tax Board (FTB) denying its claim for refund for tax year 2017.

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

ISSUES

1. Whether appellant is entitled to a refund of the annual LLC tax imposed for 2017.
2. Whether appellant is entitled to abatement of the late payment penalty imposed for 2017.

FACTUAL FINDINGS

1. Appellant was a limited liability company (LLC) that was formed on September 19, 2017, when it filed articles of organization with the California Secretary of State (SOS). It had one member, Firoozeh Tavakolynia. Ms. Tavakolynia also served as appellant's manager.
2. Appellant filed its California tax return (Form 568) for its 2017 year on April 15, 2018. On its 2017 return, appellant reported it had total income of \$18,808. Appellant also

- reported that it was liable for the \$800 annual LLC tax, which it claimed to have already paid.
3. FTB, however, had no record of having received the \$800 payment appellant claimed to have made for 2017. Accordingly, FTB issued a Notice of Balance Due to appellant on May 23, 2018, seeking payment of the tax liability, and imposing a penalty for late payment (\$64), and a small amount of interest (approximately \$14). The total amount claimed to be due in the notice was \$878.23.
 4. Appellant paid the amount claimed to be due by FTB on May 31, 2018.
 5. Shortly thereafter, appellant filed a timely claim for refund of the amount paid. In the refund claim, appellant's managing member asserted that:
 - a. She is a single mother.
 - b. In or about 2017, her husband passed away.
 - c. She works as a realtor, and is in a "low income situation."
 - d. She formed appellant as an LLC expecting that she would earn money through it (presumably using it to conduct her real estate business). But because her husband died, that never happened. She cancelled the LLC on April 23, 2018.
 - e. She did not realize that she would owe the LLC tax for an LLC that was only in existence for three months during 2017.
 - f. Appellant "did not conduct any business for the 7 months of its existence."
 6. After FTB denied appellant's claim for refund, appellant filed this timely appeal.

DISCUSSION

R&TC section 17941(b) provides that every LLC is required to pay an \$800 annual tax to California for the privilege of doing business in this state if any of three requirements are 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 SOS's office; or (3) a certificate of registration has been issued by the SOS's office.

There is no real dispute that appellant owed the annual tax for 2017. In fact, appellant reported the tax as being due on its 2017 return. Appellant simply failed to pay it, although appellant *claimed* to have paid it. Appellant's articles of organization were on file with the SOS during the last three months of 2017, and, contrary to its position on appeal, appellant reported that it was engaged in business during 2017. Accordingly, appellant was required to pay the

annual LLC tax, and despite Ms. Tavakolynia’s alleged personal financial difficulties, we have no basis for abating and refunding the \$800 tax liability.¹

Under R&TC section 19132, a late payment penalty shall be imposed whenever a tax liability is not paid by the due date. Pursuant to R&TC section 19132, FTB imposed a \$64 late payment penalty against appellant.² The late payment penalty may be abated if the taxpayer establishes that the late payment was due to reasonable cause and not due to willful neglect. (R&TC, § 19132(a).) To establish reasonable cause, the taxpayer must show the failure to pay timely occurred despite the exercise of “ordinary business care and prudence.” (*Appeal of Friedman*, 2018-OTA-077P.)³

Reasonable cause may be found for a failure to timely pay tax if the taxpayer shows that it exercised ordinary business care and prudence in providing for payment of the tax liability and was nevertheless either unable to pay the tax or would suffer an “undue hardship” if it was paid on the due date. (Treas. Reg. § 301.6651-1(c)(1).) The burden of proof is on the taxpayer to establish reasonable cause. (*Appeal of Sleight* (83-SBE-244) 1983 WL 15615.) Unsupported assertions are not sufficient to satisfy a taxpayer’s burden of proof. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.)

Here, although appellant’s managing member has provided *some* information about the hardships she has faced (her low income and the loss of her spouse), that information is not sufficient to satisfy the burden of proof. Appellant has not shown that reasonable steps were taken to ensure that the annual \$800 tax was paid in a timely fashion. The statement by appellant’s managing member,⁴ that she did not realize that a tax would be owed for an LLC that was in existence for only three months of the tax year, does not show that appellant took reasonable steps to ensure that the tax liability would be paid. A reasonably prudent businessperson would acquaint themselves with the legal and tax consequences of setting up an

¹ We have no authority to settle or compromise a tax liability. Our jurisdiction is limited to determining the correct amount of a taxpayer’s California tax liability. (*Appeals of Dauberger, et al.* (82-SBE-082) 1982 WL 11759.)

² Appellant does not contend that FTB has computed the amount of the penalty improperly.

³ Precedential decisions of the Office of Tax Appeals (OTA) may be found on OTA’s website at <<https://ota.ca.gov/opinions>>.

⁴ LLCs, like corporations, are legal fictions that can only act through their agents. (See *Kight v. CashCall, Inc.* (2011) 200 Cal.App.4th 1377, 1392.) Thus, we examine Ms. Tavakolynia’s actions (or lack thereof) for purposes of determining whether appellant acted with due care.

LLC before doing so. (See *Appeal of Diebold, Inc.* (83-SBE-002) 1983 WL 15389 [taxpayers do not exercise ordinary business care and prudence when they fail to acquaint themselves with the requirements of California’s tax law].) Accordingly, appellant has not satisfied its burden of proving reasonable cause for the late payment of its 2017 tax liability.

HOLDINGS

1. Appellant is not entitled to a refund of the annual LLC tax imposed for 2017.
2. Appellant is not entitled to abatement of the late payment penalty imposed for 2017.

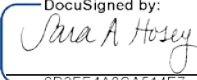
DISPOSITION

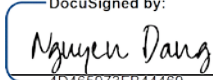
FTB’s action is sustained in full.

DocuSigned by:

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 Jeffrey I. Margolis
 Administrative Law Judge

We concur:

DocuSigned by:

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 Sara A. Hosey
 Administrative Law Judge

DocuSigned by:

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 Nguyen Dang
 Administrative Law Judge

Date: 3/23/2020