

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No. 19024302
)	
PRT CONSULTING, INC.)	
)	
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OPINION

Representing the Parties:

For Appellant:	Peter J. Muller, P.E., President
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For Respondent:	Gi Nam, Tax Counsel
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For the Office of Tax Appeals:	William J. Stafford, Tax Counsel III
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E. S. EWING, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, PRT Consulting, Inc. (appellant) appeals an action by respondent Franchise Tax Board (FTB) in denying appellant's claims for refund totaling \$4,030.48¹ for the 2014 through 2017 tax years.

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

ISSUES

- Whether appellant has established a basis for refunding the annual \$800 minimum franchise taxes imposed for the 2015 through 2017 tax years.²

¹ This amount consists of the following: for the 2014 tax year, per shareholder late-filing penalty of \$216; for the 2015 tax year, a minimum franchise tax of \$800, per shareholder late-filing penalty of \$216, a late-filing penalty of \$200, an underpayment of estimated tax penalty (estimated tax penalty) of \$22.01, and interest of \$97.34; for the 2016 tax year, a minimum franchise tax of \$800, per shareholder late-filing penalty of \$216, a late-filing penalty of \$200, an estimated tax penalty of \$23.54, and interest of \$63.08; and for the 2017 tax year, a minimum franchise tax of \$800, per shareholder late-filing penalty of \$126, a late-filing penalty of \$200, an estimated tax penalty of \$29.28, and interest of \$21.23.

² We note that appellant did not report, and FTB did not assess, the minimum franchise tax for its 2014 taxable year. As discussed below, appellant qualified as a foreign corporation with the California Secretary of State in 2014 and therefore is not subject to the \$800 minimum franchise tax for that year. (See R&TC, § 23153(f)(1) ["Notwithstanding subdivision (a), every corporation that incorporates or qualifies to do business in this state on or after January 1, 2000, shall not be subject to the minimum franchise tax for its first taxable year"].)

2. Whether appellant has established reasonable cause for abating the S corporation late-filing penalties imposed under R&TC section 19172.5 for the 2014 through 2017 tax years and the late-filing penalties imposed under R&TC section 19131 for the 2015 through 2017 tax years.
3. Whether appellant has established a basis for abating the estimated tax penalties imposed for the 2015 through 2017 tax years.
4. Whether appellant has shown that interest should be abated for the 2014 through 2017 tax years.

FACTUAL FINDINGS

1. On March 24, 2014, appellant, an S corporation, filed a Statement of Designation by Foreign Corporation with the California Secretary of State (SOS) to qualify as a foreign corporation.
2. Although appellant had registered with the SOS in 2014, appellant did not timely file California income tax returns for the 2014 through 2017 tax years.
3. On July 11, 2018, FTB sent a notice to appellant regarding appellant's California filing and payment requirements.
4. In response, appellant sent FTB a letter dated August 9, 2018, asserting that it registered to do business in California under the mistaken belief that it would be awarded a project requiring it to employ people in California. Appellant also asserted, however, that the project did not materialize and it never did any work in California. Appellant stated that it was under the mistaken belief that it did not need to file California returns because it did not complete any work in California.
5. Shortly thereafter, appellant filed a Certificate of Surrender with the SOS on August 14, 2018.
6. In a letter dated September 6, 2018, FTB notified appellant that appellant was required to file tax returns and pay the minimum franchise taxes until appellant was formally dissolved or withdrawn.
7. Subsequently, appellant filed California returns for the 2014 through 2017 tax years and paid the full amounts due for each applicable tax year. Appellant timely filed claims for refund for such amounts, which FTB denied. Appellant then filed this timely appeal.

DISCUSSION

Issue 1: Whether appellant has established a basis for refunding the annual \$800 minimum franchise taxes imposed for the 2015 through 2017 tax years.

An S corporation is required to pay the minimum franchise tax if it is incorporated in California, is qualified to do business in California by registering with the SOS, or is doing business in California. (R&TC, §§ 23153(a), (b), 23802(c).) Even if a foreign corporation ceases doing business, it is subject to the annual minimum franchise tax until the date it files its certificate of surrender. (Cal. Code Regs., tit. 18, § 23151; *Appeal of Surfcomber, Inc.* (74-SBE-48) 1974 WL 2864.) A taxpayer has the burden of showing that FTB's determination of tax is erroneous. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509, 514.) Unsupported assertions are not sufficient to carry a taxpayer's burden of proof. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.)

Appellant asserts that it was under the mistaken belief that it did not need to file California returns and pay California taxes because it did not conduct any business in California. Further, appellant asserts that FTB did not timely notify appellant of its California filing and payment requirements. Based on the foregoing, appellant requests refunds of the annual \$800 minimum franchise taxes imposed for tax years 2015 through 2017.

Here, appellant was required to pay the annual minimum franchise taxes until it filed its certificate of surrender, which occurred on August 14, 2018. Accordingly, appellant is liable for the annual \$800 minimum franchise taxes for the 2015 through 2017 tax years. Appellant has not shown that FTB's determinations were erroneous. (*Todd v. McColgan, supra.*) Further, we note that nothing in the R&TC requires that FTB notify appellant of its statutory duty to pay taxes.

Issue 2: Whether appellant has established reasonable cause for abating the S corporation late-filing penalties imposed under R&TC section 19172.5 for the 2014 through 2017 tax years and the late-filing penalties imposed under R&TC section 19131 for the 2015 through 2017 tax years.

R&TC section 19172.5 provides that a late-filing penalty is to be imposed when an S corporation fails to file a tax return on or before the time prescribed, unless it is shown that the

failure is due to reasonable cause. California also imposes a penalty for failure to file a return by the due date pursuant to R&TC section 19131.

To establish reasonable cause for a refund of a late-filing penalty, a taxpayer “must show that the failure to file a timely return occurred despite the exercise of ordinary business care and prudence, or that cause existed as would prompt an [ordinarily] intelligent and prudent businessman to have so acted under similar circumstances.” (*Appeal of Tons* (79-SBE-027) 1979 WL 4068.) Ignorance of a filing requirement or a misunderstanding of the law generally does not excuse a late filing. (*Appeal of Diebold, Inc.* (83-SBE-002) 1983 WL 15389.)

Appellant asserts that it mistakenly believed it did not have to file California tax returns because it did not conduct any business in California. Appellant also asserts that the late-filing penalties should be refunded because FTB failed to notify appellant of its California filing requirements in a timely manner.

Here, appellant’s assertion that it was not aware of its California filing requirements does not demonstrate that appellant acted as an ordinarily intelligent and prudent businessperson. As indicated above, ignorance of a filing requirement or a misunderstanding of the law generally does not excuse a late filing. (*Appeal of Diebold, Inc., supra.*) Further, we note that nothing in the R&TC requires that FTB remind appellant of its statutory duty to file returns. In summary, appellant has not demonstrated reasonable cause for abatement of the late-filing penalties.

Issue 3: Whether appellant has established a basis for abating the estimated tax penalties imposed for the 2015 through 2017 tax years.

A corporation subject to the franchise tax imposed by Part 11 of the R&TC must file a declaration of estimated tax and pay the estimated amount of tax for each tax year, and the estimated tax cannot be less than the minimum franchise tax. (See R&TC, §§ 19023, 19025.) A corporation which underpays estimated tax is penalized by an addition to tax equal to a specified rate of interest applied to the amount of the underpayment. (R&TC, §§ 19142, 19144.) A penalty for the underpayment of estimated tax is properly imposed where the taxpayer’s installment payments are less than the amounts due at the end of the installment periods. (*Appeal of Bechtel Inc.* (78-SBE-052) 1978 WL 3525.) The failure to timely pay any estimated tax will subject the taxpayer to the penalty. (*Appeal of Uniroyal, Inc.* (75-SBE-003) 1975 WL 3264.) The R&TC does not contain a reasonable cause or extenuating circumstances exception to the underpayment of estimated tax penalty, even when the taxpayer lacks the

information necessary to accurately estimate income. (*Appeal of Decoa, Inc.* (76-SBE-032) 1976 WL 4048.) Here, appellant has not demonstrated any basis to abate the estimated tax penalties.

Issue 4: Whether appellant has shown that interest should be abated for the 2015 through 2017 tax years.

Imposition of interest is mandatory; it is not a penalty, but 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 Jaegle* (76-SBE-070) 1976 WL 4086.)

Under R&TC section 19104, Office of Tax Appeals (OTA) may only abate or refund interest on appeal to the extent that interest is attributable in whole or in part to any unreasonable error or delay by an officer or employee of FTB (acting in his or her official capacity) in performing a ministerial or managerial act.³ (R&TC, § 19104(a)(1).) Further, the error or delay can be taken into account only if no significant aspect is attributable to the taxpayer, and the error or delay occurred after FTB contacted the taxpayer in writing about the underlying deficiency. (R&TC, § 19104(b)(1).)

In the *Appeal of Kishner* (99-SBE-007) 1999 WL 1080250, California adopted the language from Treasury Regulation section 301.6404-2(b)(2), defining a “ministerial act” as:

[A] procedural or mechanical act that does not involve the exercise of judgment or discretion, and that occurs during the processing of a taxpayer's case after all prerequisites to the act, such as conferences and review by supervisors, have taken place. A decision concerning the proper application of federal tax law (or other federal or state law) is not a ministerial act.

When a California statute is substantially identical to a federal statute (such as with the interest abatement statute in this case), we may consider federal law interpreting the federal statute as highly persuasive. (*Douglas v. State of California* (1942) 48 Cal.App.2d 835.) In this regard, Treasury Regulation section 301.6404-2(b)(1) defines a “managerial act” as:

[A]n administrative act that occurs during the processing of a taxpayer's case involving the temporary or permanent loss of records or the exercise of judgment

³ We note that R&TC sections 21012 and 19112 provide for relief from interest, but they are inapplicable here. R&TC section 21012 does not apply because FTB did not provide appellant any written advice. R&TC section 19112 also does not apply because OTA does not have jurisdiction to review FTB's interest abatement determination, if one was ever made, under this provision. (*Appeal of Moy*, 2019-OTA-057P.)

or discretion relating to management of personnel. A decision concerning the proper application of federal tax law (or other federal or state law) is not a managerial act.

Here, appellant has not demonstrated that FTB caused the accrual of interest because of a delay in the performance of a ministerial or managerial act as required by R&TC section 19104. Thus, we find no basis for abatement of interest.

HOLDINGS

1. Appellant has not established a basis for refunding the \$800 minimum franchise taxes imposed for the 2015 through 2017 tax years.
2. Appellant has not established reasonable cause for abating the S corporation late-filing penalties imposed under R&TC section 19172.5 for the 2014 through 2017 tax years and the late-filing penalties imposed under R&TC section 19131 for the 2015 through 2017 tax years.
3. Appellant has not established a basis for abating the estimated tax penalties imposed for the 2015 through 2017 tax years.
4. Appellant has not shown that interest should be abated for the 2014 through 2017 tax years.

DISPOSITION

FTB's action denying appellant's claims for refund is sustained.

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Elliott Scott Ewing

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Elliott Scott Ewing
Administrative Law Judge

We concur:

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John O. Johnson

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John O. Johnson
Administrative Law Judge

DocuSigned by:

Kenneth Gast

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Kenneth Gast
Administrative Law Judge

Date Issued: 2/4/2020