

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

LORENANG ENTERPRISES, LLC

) OTA Case No. 19125606
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OPINION

Representing the Parties:

For Appellant:

Angela R. Fleming, Member

For Respondent:

Sarah J. Fassett, Tax Counsel

For Office of Tax Appeals:

Oliver Pfof, Tax Counsel

R.TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Lorenang Enterprises, LLC (appellant) appeals an action by Franchise Tax Board (respondent) proposing additional tax of \$800, a per partner late filing penalty of \$432, a demand penalty of \$200, a filing enforcement fee of \$88,¹ and applicable interest² for the 2016 tax year.

Appellant waived its right to an oral hearing; therefore, we decide this matter based on the written record.

ISSUES

1. Whether appellant has shown error in respondent’s proposed assessment of tax for the 2016 tax year.
2. Whether appellant has shown error in respondent’s proposed assessment of the per partner late filing penalty for the 2016 tax year.

¹ In its opening brief, respondent stated it will abate the demand penalty and the filing enforcement fee. Consequently, we will not further discuss the demand penalty and filing enforcement fee.

² Although appellant contends that it is not liable for the total proposed assessment, which includes interest, appellant does not provide a specific argument regarding interest abatement on appeal. We find no grounds for interest relief, and will not discuss this issue further.

FACTUAL FINDINGS

1. Appellant filed Articles of Organization of a Limited Liability Company (LLC) with the California Secretary of State (SOS) on October 17, 2014.
2. Appellant maintained its filing with the SOS through the 2016 tax year.
3. During 2016, appellant had two members. Appellant did not elect to be classified as a corporation for income tax purposes.
4. Respondent received income information from the California State Board of Equalization indicating appellant should have filed a California business entity income tax return for the 2016 tax year. Since respondent did not have a record of receiving a 2016 return from appellant, it issued a Demand for Tax Return on September 26, 2018.
5. On May 24, 2019, respondent issued a Notice of Proposed Assessment (NPA), which appellant protested.
6. At protest, respondent determined appellant had a filing requirement and issued a Determination of Filing Requirement - Protest to appellant on June 27, 2019.
7. Respondent received additional correspondence from appellant on July 15, 2019 and July 23, 2019, arguing that it already filed its income tax return. Subsequently, respondent issued a Notice of Action on November 19, 2019, affirming the NPA.
8. Appellant filed this timely appeal.

DISCUSSION

Issue 1: Whether appellant has shown error in respondent's proposed assessment of tax for the 2016 tax year.

Respondent's determination is presumed correct and taxpayers have the burden of proving it to be wrong. (*Appeal of Wright Capital Holdings, LLC*, 2019-OTA-219P; *Todd v. McColgan* (1949) 89 Cal.App.2d 509.) In the absence of credible, competent, and relevant evidence showing that respondent's determination is incorrect, it must be upheld. (*Appeal of Seltzer* (80-SBE-154) 1980 WL 5068.)

Appellant is a two-member LLC that did not elect to be classified as a corporation for income tax purposes. Accordingly, it is classified, by default, as a partnership for most income tax purposes. (Cal. Code Reg., tit. 18, § 23038(b)-3(a); Treas. Reg. § 301.7701-3.) Every LLC that is classified as a partnership for California tax purposes that is doing business in California,

organized in California, or registered with the California SOS must file a return on or before the 15th day of the third month following the close of its tax year. (R&TC, § 18633.5(a); see also R&TC, § 17941(a), (b)(1).) Additionally, R&TC section 17941(b)(1) states that an LLC, for which the California SOS has accepted its articles of organization, shall annually pay a tax of \$800 for the privilege of doing business in California. The LLC tax is due and payable on or before the 15th day of the fourth month of the tax year. (R&TC, § 17941(c).) The LLC must pay the annual LLC tax for each tax year or part thereof until a certificate of cancellation of articles of organization is filed with the California SOS. (R&TC, § 17941(b)(1).) The effective date of cancellation of an LLC is the date on which the certificate of cancellation is filed with the California SOS. (R&TC, § 17944.)

Appellant does not dispute that it had a California filing requirement and an obligation to pay the appropriate amount of tax for the 2016 tax year, but argues that it filed a timely return on the “wrong form.” Apparently, appellant is contending that its owner(s) filed personal income tax return(s) that satisfied appellant’s income tax filing requirement, or that appellant filed a sales and use tax return that satisfied appellant’s income tax filing requirement. However, even if appellant’s owners did report the income or loss generated by appellant on their individual income tax returns, that would not obviate the need for appellant itself to file its LLC return (Form 568) and pay the \$800 annual LLC tax.³ Appellant’s filing of a State, Local, and District Sales and Use Tax Return for the period at issue also does not suffice. Accordingly, we uphold respondent’s tax determination.

Issue 2: Whether appellant has shown error in respondent’s proposed assessment of the per partner late filing penalty for the 2016 tax year.

R&TC section 19172 imposes a late filing penalty when a partnership (or an LLC treated as a partnership) fails to file a return at the time prescribed, unless it is shown that the failure is due to reasonable cause. Respondent imposed the penalty because appellant did not file a 2016 California income tax return by March 15, 2017.

As stated above, appellant’s argument that it filed a timely 2016 income tax return is not supported by facts or evidence. Appellant alleges it received untimely and conflicting

³ Appellant also contends that it “never made anything & was closed.” However, appellant was not closed during the year at issue, and the annual LLC tax is due regardless of whether the LLC generated profits or losses from its operations.

information from respondent regarding the filing of its 2016 income tax return. However, such allegations are not supported by the evidence, and, even if true, do not show error in respondent’s assessment of the late filing penalty. Appellant makes no other argument to support abatement of the per partner late filing penalty based on reasonable cause grounds, and we also find no reason to abate the penalty.

HOLDINGS

1. Appellant has not shown error in respondent’s proposed assessment of tax for the 2016 tax year.
2. Appellant has not shown error in respondent’s proposed assessment of the per partner late filing penalty for the 2016 tax year.

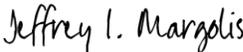
DISPOSITION

Respondent’s assessment of the demand penalty and filing enforcement fee is reversed, as conceded by respondent on appeal. Respondent’s action is otherwise sustained.

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 Richard Tay
 Administrative Law Judge

We concur:

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 Jeffrey I. Margolis
 Administrative Law Judge

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 Kenneth Gast
 Administrative Law Judge

Date Issued: 1/4/2021