

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 21067922
DAR WILLIAMS PROJECT, INC.)
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OPINION

Representing the Parties:

For Appellant: Aliza Hirschman, Representative

For Respondent: Alisa L. Pinarbasi, Tax Counsel

D. CHO, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Dar Williams Project, Inc. (appellant) appeals an action by the Franchise Tax Board (respondent) proposing tax of \$800, a late-filing penalty of \$200, a notice and demand penalty of \$200, an S corporation late-filing penalty of \$432,¹ and a filing enforcement fee of \$83, plus applicable interest, for the 2018 tax year.

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

ISSUE

Whether appellant owed the minimum tax of \$800 for the 2018 tax year.²

FACTUAL FINDINGS

1. Appellant is taxed as an S corporation for income tax purposes. It is incorporated in Delaware and headquartered in New York, New York.

¹ On appeal, respondent conceded to reduce the S corporation late-filing penalty from \$432 to \$216.

² Appellant’s sole contention on appeal is that it did not owe the \$800 minimum tax. Appellant has not argued that it had reasonable cause to abate the penalties; whether the filing enforcement fee can be abated; or whether interest should be abated. As a result, it is our understanding that appellant is only contesting the penalties, fee, and interest as it pertains to the minimum tax such that if appellant does not owe the minimum tax, it will not owe any of the penalties, the filing enforcement fee, and interest.

2. Appellant did not file (and still has not filed) a California S Corporation Franchise or Income Tax Return for the 2018 tax year.
3. Subsequently, respondent received information that appellant received a 1099-MISC at a California address. Based on this information, respondent concluded that appellant had a California presence and was required to file a tax return for the 2018 tax year.
4. Respondent issued a Demand for Tax Return (Demand), but appellant did not provide a response to the Demand.
5. Respondent issued a Notice of Proposed Assessment (NPA) for the minimum tax of \$800, a late-filing penalty of \$200, a demand penalty of \$200, an S corporation late-filing penalty of \$432, a filing enforcement fee of \$83, and applicable interest.
6. Appellant protested the NPA stating that it did not have a presence in California.
7. Respondent denied the protest and issued a Notice of Action affirming the NPA.
8. This timely appeal followed.

DISCUSSION

An S corporation is subject to the minimum franchise tax imposed pursuant to R&TC section 23153. (R&TC, § 23802(c).) R&TC section 23153 provides that every corporation shall be subject to the minimum franchise tax from the earlier of the date of incorporation, qualification, or commencing business within this state, until the effective date of dissolution or, if later, the date the corporation ceases to do business in this state. For the 2018 taxable year, the annual minimum franchise tax was \$800. (R&TC, § 23153(d).)

As relevant here, “[d]oing business” is defined as “actively engaging in any transaction for the purpose of financial or pecuniary gain or profit.” (R&TC, § 23101(a).) For taxable years beginning on or after January 1, 2011, a taxpayer is also “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 personal 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)(1)-(4).)

Respondent’s determination of tax is presumed to be correct, and a taxpayer has the burden of proving error. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) Unsupported assertions are not sufficient to satisfy a taxpayer’s burden of proof. (*Ibid.*) Respondent’s determinations cannot be successfully rebutted when the taxpayer fails to provide credible, competent, and relevant evidence as to the issues in dispute. (*Ibid.*)

Here, appellant is an S corporation for income tax purposes that is incorporated in Delaware and headquartered in New York, New York. However, for the 2018 tax year, a third party issued a Form 1099-MISC to appellant that listed a California address for appellant. In addition, appellant issued a Form W-2 to its employee and sole shareholder and listed a similar California address for appellant. These two documents would indicate that appellant had a presence in California and was doing business within the state. Appellant’s sole argument or explanation is that it did not have any connections to California during the 2018 tax year. With respect to the California addresses listed on the Form 1099-MISC and Form W-2, appellant states that the “address and telephone number listed were probably of the company’s business manager/accountant who moved out of state in December of 2015.” As previously stated, unsupported assertions are not sufficient to satisfy a taxpayer’s burden of proof. (*Appeal of GEF Operating, Inc.*, *supra.*) Appellant has not provided any supporting documentation to show that this statement is correct. Accordingly, this statement is insufficient to establish that respondent’s determination is erroneous. Nonetheless, we note that the two tax forms, one issued to appellant and the other issued by appellant, were for the 2018 tax year, which is after the company’s business manager/accountant allegedly left the state in December 2015. As a result, this statement does not appear to be accurate or relevant to the inquiry of why appellant was associated with a California address for the 2018 tax year. In sum, appellant has not provided

any reliable documentary evidence to support its position. Therefore, we find that appellant has not met its burden of proof.³

HOLDING

Appellant is liable for the \$800 minimum franchise tax for the 2018 tax year.

DISPOSITION

As conceded by respondent, reduce the S corporation late-filing penalty from \$432 to \$216; otherwise, respondent's action is sustained.

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Daniel Cho

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Daniel K. Cho

Administrative Law Judge

We concur:

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Kenneth Gast

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Kenneth Gast

Administrative Law Judge

DocuSigned by:

Sara A. Hosey

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Sara A. Hosey

Administrative Law Judge

Date Issued: 1/31/2022

³ Respondent also indicated that appellant is in the business of entertainment, specifically musical touring and concert performances. Respondent also stated that appellant's sole shareholder is D. Williams, a folksinger. Based on these facts, respondent believes that any activity that promoted or publicized D. Williams was also beneficial to appellant. For the 2018 tax year, respondent determined that D. Williams performed in a concert in California, which benefitted appellant in California. Specifically, D. Williams's performance increased appellant's exposure in California, which could result in future concerts, increased album or book sales in California, etc. As a result, respondent argues that this performance is additional evidence to conclude that appellant was "doing business" in California during the 2018 tax year.

Appellant did not respond to this argument. As a result, we accept respondent's factual assertions as undisputed, and we agree with respondent that this evidence provides another basis for finding that appellant was doing business in California during the 2018 tax year.