

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 20086566
INNER VISION DEVELOPMENT CORP.)
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)
)

OPINION

Representing the Parties:

For Appellant: Gerald Robinson, President

For Respondent: Joel M. Smith, Tax Counsel III

For Office of Tax Appeals: Casey Green, Tax Counsel III

A. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Inner Vision Development Corp. (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing tax of \$4,894.62, a late-filing penalty of \$1,223.65, a notice and demand penalty (demand penalty) of \$1,223.65, a filing enforcement cost recovery fee of \$85.00, plus accrued interest, for the 2017 tax year.

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

ISSUES

1. Whether appellant has established error in the proposed assessment for the 2017 tax year.
2. Whether appellant has established reasonable cause for failing to timely file a 2017 California income tax return (2017 return).
3. Whether appellant has established reasonable cause for failing to timely respond to FTB’s Demand for Tax Return (Demand) for the 2017 tax year.
4. Whether the filing enforcement cost recovery fee should be abated.

FACTUAL FINDINGS

1. Appellant filed its articles of incorporation in its initial filing with the Secretary of State in 1995.
2. For tax year 2017, FTB received information from the Secretary of State indicating that appellant had a filing requirement. The Secretary of State website indicates that appellant was an active business through February 20, 2020.
3. Appellant did not timely file a 2017 return. On September 18, 2019, FTB issued to appellant a Demand for its 2017 return with a response deadline of October 23, 2019. The Demand indicated that appellant would be subject to the filing enforcement cost recovery fee if appellant did not file a 2017 return by the Demand deadline.
4. After appellant failed to respond to the Demand, FTB estimated appellant's 2017 income to be \$55,369, based on the average income amount reported to the IRS by businesses in appellant's type of industry.
5. Based on the estimated income, on December 2, 2019, FTB issued a Notice of Proposed Assessment (NPA) proposing tax of \$4,894.62, a late-filing penalty of \$1,223.65, a demand penalty of \$1,223.65, and a filing enforcement cost recovery fee of \$85.00, plus accrued interest, for the 2017 tax year.
6. On May 5, 2020, FTB received from appellant an incomplete California Corporation Franchise or Income Tax Return (Form 100) for 2017, indicating appellant had no income, and claimed deductions of \$54,000, for a net loss of \$54,000 loss and self-assessed tax of \$1,600.¹ The schedules for the claimed deductions were essentially blank, with the exception of the repeated notation that the information would be provided when appellant's CPA prepared a detailed return. Appellant labeled the return an "Interim Return - Prior to CPA – Prepared Detailed Return."
7. When FTB did not receive a completed 2017 return from appellant, FTB issued a Notice of Action (NOA) dated July 31, 2020, affirming the NPA.
8. This timely appeal followed.

¹ It is unclear how appellant calculated the tax due on this incomplete return, since if in fact appellant had zero income or a loss for the year, the minimum franchise tax under R&TC § 23153(d)(1) for a corporation such as appellant is \$800 per year. However, since the measured tax in FTB's proposed assessment exceeds this \$800 amount, OTA will not discuss this any further.

DISCUSSION

Issue 1: Whether appellant has established error in the proposed assessment for the 2017 tax year.

Generally, every corporation doing business within the limits of this state and not expressly exempted from taxation shall annually pay a tax according to or measured by its net income or if greater, the annual minimum franchise tax, for the privilege of exercising its corporate franchise within this state and must file a Form 100. (See R&TC, § 23151.) If any taxpayer fails to file a return, FTB, at any time, “may make an estimate of the net income, from any available information, and may propose to assess the amount of tax, interest, and penalties due.” (R&TC, § 19087(a).) When FTB makes a tax assessment based on an estimate of income, FTB’s initial burden is to show that its assessment is reasonable and rational. (*Appeal of Bindley*, 2019-OTA-179P.) The taxing agency need only introduce some evidence linking the taxpayer with the unreported income before the presumption of correctness is established. (*Ibid.*)

Here, appellant’s incomplete return lists no income and deductions totaling \$54,000, for a net income of negative \$54,000. The schedules regarding said deduction details are blank, and no supporting documentation has been provided. As such, this does not meet the requirements for filing a return. Based on the foregoing, FTB’s use of the average income amount reported to the IRS by businesses in appellant’s type of industry to estimate appellant’s taxable income, when appellant failed to file a complete return, is both reasonable and rational.

Once FTB has met its initial burden, the assessment is presumed correct, and the taxpayer has the burden of proving it to be erroneous. (*Appeal of Bindley, supra.*) “[A] taxpayer is not in a good position to criticize [FTB’s] estimate of his or her liability when he or she fails to file a required return and, in addition, subsequently refuses to submit information upon request.” (*Appeals of Dauberger, et al.* (82-SBE-082) 1982 WL 11759.)

Appellant contends that it does not owe any tax for the following reasons: (1) appellant never received an NPA and thus the NOA is erroneous and inaccurate; (2) appellant had no income for the 2017 tax year; and (3) appellant had already filed its 2017 return.

Any notice shall be sufficient if it is mailed to a taxpayer’s last known address. (R&TC, § 18416(b).) It is well settled that FTB’s mailing of a notice to the taxpayer’s last known address is considered sufficient notification even if the notice never actually reaches the taxpayer. (*Appeal of Goodwin* (97-SBE-003) 1997 WL 258474; *Appeal of Johnston* (83-SBE-238) 1983

WL 15609.) The last known address is the address that appears on the taxpayer's last return filed with FTB, unless the taxpayer has provided to FTB clear and concise written or electronic notification of a different address, or FTB has an address it has reason to believe is the most current address for the taxpayer. (R&TC, § 18416(c).) A review of the appeal record indicates that both the Demand, which was mailed 1.5 months before the NPA, and the NOA, which was mailed 2.5 months after the NPA, were all sent to the same address. Although appellant's last return filed with FTB is not in the record, appellant's "interim" return also references the same address used in the Demand, NPA, and NOA. Appellant does not allege, and the evidence does not show, that appellant notified FTB that its address changed during this time period. As such, the NPA was sufficient notice sent to appellant under R&TC section 18416.

Regarding appellant's assertion that it had no income during the 2017 tax year, every corporation doing business within California must annually pay tax for the privilege of exercising its corporate franchise within this state and must file a return. (R&TC, § 23151.) At minimum, a corporation "doing business" in California is subject to a minimum franchise tax of \$800 imposed under R&TC section 23153.² As such, appellant's assertion that it did not have income during the 2017 tax year is irrelevant when appellant has not provided evidence or argument that it was not subject to the minimum franchise tax for the 2017 tax year.

Finally, regarding appellant's assertion that it had already filed a 2017 return, appellant has not shown that such a return was filed, and FTB does not have evidence that it received a complete return. As such, appellant has failed to meet its burden of proof to establish error in FTB's proposed assessment.

Issue 2: Whether appellant has established reasonable cause for failing to timely file a 2017 return.

R&TC section 19131 requires FTB to impose a late-filing penalty when a taxpayer does not file its return on or before its due date, unless the taxpayer shows that the late filing was due to reasonable cause and not due to willful neglect. When FTB imposes a penalty, it is presumed to have been imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) A taxpayer may rebut this presumption by providing credible and competent evidence supporting abatement of the penalty for reasonable cause. (*Ibid.*) Reasonable cause for late filing is shown when the evidence

² "Doing business" is define in R&TC section 23101.

establishes that an ordinarily intelligent and prudent businessperson would have acted similarly under the same circumstances. (*Appeal of Head and Feliciano*, 2020-OTA-127P.)

Here, appellant's due date to file its 2017 return was April 15, 2018, with an automatic extension deadline of October 15, 2018. To date, appellant has failed to file a 2017 completed return. Appellant seems to contend that it has since filed a complete "more formal CPA return," since filing its "interim" return dated April 30, 2020, but FTB has not received it, and it is not included in OTA's record on appeal. Appellant has not provided any arguments, and the evidence does not show, that there was reasonable cause for appellant's late filing of the 2017 return. Thus, appellant has not established reasonable cause for failing to timely file its 2017 return.

Issue 3: Whether appellant has established reasonable cause for failing to timely respond to FTB's Demand for the 2017 tax year.

R&TC section 19133 provides that if a taxpayer fails to file a return or provide information upon notice and demand by FTB, then FTB may impose a demand penalty unless taxpayer's failure is due to reasonable cause. The burden of proving reasonable cause for failing to file or respond upon demand is on the taxpayer. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) To establish reasonable cause, a taxpayer must show that the failure to timely respond to a demand occurred despite the exercise of ordinary business care. (*Appeal of Jones*, 2021-OTA-144P.) The taxpayer's reason for failing to respond to a demand must be such that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of GEF Operating, Inc., supra.*) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Ibid.*)

Here, on September 18, 2019, FTB issued to appellant a Demand to file a 2017 return by October 23, 2019. Appellant asserts the same facts and circumstances stated previously. However, these assertions do not establish reasonable cause to abate the demand penalty either. Appellant has not provided any explanation as to why it could not respond to the Demand by October 23, 2019. Accordingly, appellant has not established reasonable cause for failing to timely respond to FTB's Demand.

Issue 4: Whether the filing enforcement cost recovery fee should be abated.

R&TC section 19254(a)(2) provides that if a taxpayer fails to make and file a tax return within 25 days after FTB mails a formal legal demand to file the tax return, FTB will impose a filing enforcement cost recovery fee. Once properly imposed, the fee cannot be abated under any circumstances, including reasonable cause. (*Appeal of Wright Capital Holdings LLC*, 2019-OTA-219P.)

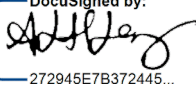
Here, FTB informed appellant in the Demand dated September 18, 2019, that appellant would be subject to the filing enforcement cost recovery fee if appellant did not file a 2017 return by the Demand due date. FTB did not receive the 2017 return from appellant by the date prescribed by the Demand. Therefore, FTB properly imposed the filing enforcement cost recovery fee, and there is no basis to abate it.

HOLDINGS

1. Appellant has not established error in the proposed assessment for the 2017 tax year.
2. Appellant has not established reasonable cause for failing to timely file a 2017 return.
3. Appellant has not established reasonable cause for failing to timely respond to FTB’s Demand for the 2017 tax year.
4. There is no basis to abate the filing enforcement cost recovery fee.

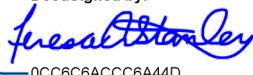
DISPOSITION

FTB’s action is sustained.

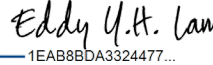
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 Andrea L.H. Long
 Administrative Law Judge

We concur:

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 Teresa A. Stanley
 Administrative Law Judge

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 Eddy Y.H. Lam
 Administrative Law Judge

Date Issued: 10/17/2022