

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
GOLDEN HERB LLC

) OTA Case No. 21119048
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OPINION

Representing the Parties:

For Appellant: Sanduo Xu, Member/Owner

For Respondent: Christopher M. Cook, Tax Counsel III

A. WONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Golden Herb LLC (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying what FTB construed as appellant’s claim for refund for the 2018 tax year.

Appellant waived the right to an oral hearing, so Office of Tax Appeals (OTA) decides this matter based on the written record.

ISSUE

Whether appellant is entitled to a refund for the 2018 tax year.

FACTUAL FINDINGS

1. Appellant, a California limited liability company (LLC), organized on February 24, 2015, and dissolved on June 17, 2020.
2. During its existence, appellant did not file a tax return for any tax year, including the 2018 tax year at issue.
3. On April 15, 2019, appellant paid the annual LLC tax of \$800, which FTB applied to the 2018 tax year.
4. On February 24, 2021, FTB issued to appellant a four-page FTB 765 (*Payment Received – Missing Tax Return*) form (FTB 765 form), indicating that FTB could not locate appellant’s 2018 tax return. On pages three and four, the FTB 765 form included

- alternative parts to be completed by the recipient depending upon the applicable scenario. As relevant here, if the recipient did not have a filing requirement, the FTB 765 form instructed the recipient to complete Part A (*Claim for Refund*). Alternatively, if the recipient had filed a tax return, the FTB 765 form instructed the recipient to complete Part D (*Tax Return Filed*). If the recipient had a filing requirement but had not filed a tax return, the FTB 765 form instructed the recipient to mail FTB a completed tax return.
5. On March 30, 2021, FTB received appellant’s signed response, which included pages three and four of the FTB 765 form. On Part A (*Claim for Refund*), the fill-in areas for the claim amount, tax year, basis of claim, and statement of facts were left blank. On Part D (*Tax Return Filed*), appellant claimed that it had filed a tax return on April 15, 2018, and, as supporting evidence, included copies of an FTB 3522 (*LLC Tax Voucher*) form (FTB 3522 form) for the 2018 tax year and an \$800 check dated April 15, 2018, made out to FTB.
 6. FTB treated appellant’s March 30, 2021 response as a claim for refund for the 2018 tax year.
 7. On August 20, 2021, FTB denied appellant’s claim for refund because the circumstances described therein did not constitute reasonable cause.
 8. On October 20, 2021, appellant mailed to OTA unsigned correspondence appealing FTB’s denial, explaining that it had never claimed a tax refund.
 9. On November 30, 2021, OTA acknowledged appellant’s correspondence but indicated that all appeals must be in writing and signed.
 10. On December 27, 2021, OTA received appellant’s signed request for appeal, with the following explanation: “For tax year 12/18, I did file my tax return and provide copy after agency request it.”

DISCUSSION

On appeal, appellant alleges that it never filed a claim for a tax refund, but maintains that it did file its 2018 tax return. In support, appellant provides a copy of its FTB 3522 form for the 2018 tax year.

Every claim for refund must be in writing, must be signed by the taxpayer or the taxpayer’s authorized representative, and must state the specific grounds upon which it is founded. (R&TC, § 19322.) Appellant bears the burden of proving entitlement to its refund

claim, which means it must not only prove the tax paid was incorrect, but also produce evidence to establish the proper amount of tax due, if any. (*Appeal of Jali, LLC*, 2019-OTA-204P.)

Here, appellant did not complete Part A (*Claim for Refund*) on its March 30, 2021 response to FTB and, by its own admission, did not intend to file a claim for refund. However, FTB construed appellant’s response as a claim for refund, then denied it. Because appellant did not intend to file a claim for refund and did not specify any grounds for a refund, OTA concludes that appellant is not entitled to one for the 2018 tax year.¹

HOLDING

Appellant is not entitled to a refund for the 2018 tax year.

DISPOSITION

FTB’s action is sustained.

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Andrew Wong
Administrative Law Judge

We concur:

DocuSigned by:

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Huy “Mike” Le
Administrative Law Judge

DocuSigned by:

88E35E2A835348D...
Ovsep Akopchikyan
Administrative Law Judge

Date Issued: 6/7/2023

¹ Appellant’s main contention on appeal is that contrary to the FTB 765 form dated February 24, 2021, it did file a 2018 tax return. However, appellant misconstrues the FTB 3522 form it supplied to FTB and OTA as proof; that document is not a tax return but a form used to facilitate payment of the annual LLC tax of \$800.