

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 220510361
MORE THAN WE DESERVE, L.P.)
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OPINION

Representing the Parties:

For Appellant: T. Cotsen-Victor, Representative

For Respondent: Cassandra Banks, Tax Counsel III

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19331, More Than We Deserve, L.P. (appellant) appeals respondent Franchise Tax Board’s (FTB’s) deemed denial of appellant’s claim for refund of \$800 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 was a disregarded limited partnership (DLP) for federal income tax purposes and is entitled to a refund of the \$800 annual limited partnership tax.

FACTUAL FINDINGS

1. On July 27, 2018, a Certificate of Limited Partnership (Certificate) was filed on behalf of appellant with the California Secretary of State (SOS). The Certificate named C. Consumption, Inc. (CCI) as the general partner for appellant. CCI’s CEO signed the Certificate. Appellant and CCI used the same address in Redondo Beach, California.
2. On October 24, 2018, a Certificate of Correction (Correction) was filed on behalf of appellant with the California SOS, which updated appellant’s address in Redondo Beach, California. CCI’s CEO signed the Correction on behalf of appellant’s general partner.

3. Appellant timely paid the \$800 minimum annual limited partnership tax for the 2018 tax year.
4. On June 24, 2020, an Amendment to Certificate (Amendment) was filed on behalf of appellant with the California SOS. The Amendment dissociated appellant's general partner CCI and identified a new general partner, 4 Clothes 4 TC, LLC (4C4, LLC). CCI's CEO signed the Amendment as a member of 4C4, LLC and as CCI's CEO.
5. Appellant filed a claim for refund dated March 25, 2021, for the 2018 tax year. The claim for refund states that appellant is disregarded for federal income tax purposes and is not required to file a California partnership return or pay the \$800 annual tax pursuant to FTB Legal Ruling 2019-02.
6. Because FTB did not act on appellant's claim for refund within six months following the claim, appellant deemed its claim denied and filed this timely appeal.
7. On appeal, appellant provides a limited partnership agreement (LP Agreement) between 4C4, LLC, as general partner, and the T.L.J. Cotsen Victor Living Trust (Trust), as the sole limited partner, effective as of October 1, 2018. CCI's CEO signed as Manager on behalf of 4C4, LLC and as Trustee on behalf of Trust. The signatures are undated.
8. Appellant also provides 4C4, LLC's operating agreement (Operating Agreement), between 4C4, LLC, as the Company, and Trust¹, as the sole Member, entered into as of December 13, 2017. CCI's CEO signed as Manager on behalf of 4C4, LLC and as Trustee on behalf of Trust; however, the signatures are undated.²
9. On July 26, 2022, FTB sent appellant an information document request (IDR), requesting the following documents: (1) all Certificates applicable for 2018; (2) appellant's LP Agreement between CCI as general partner and other limited partners; (3) an organizational chart showing appellant's ownership for 2018; (4) and the 2018 federal tax returns for all partners of appellant.³ On September 26, 2022, FTB sent a follow-up IDR. As of the date briefing closed, the record contains no response by appellant.

¹ The Operating Agreement refers to the Trust dated September 12, 1989, as amended.

² Appellant also provides copies of its refund claim, FTB Legal Ruling 2019-02, and the Amendment.

³ FTB also requested clarification concerning whether C Consumption Management, Inc. was the same entity as CCI and a description of that entity's relationship to appellant.

DISCUSSION

Burden of Proof

Appellant bears the burden of proving entitlement to a refund claim, which means that it must not only prove the tax paid was incorrect but must also produce evidence to establish the proper amount of tax due, if any. (*Appeal of Jali, LLC*, 2019-OTA-204P.) In an action for refund, a taxpayer cannot assert error and thus shift to the state the burden to justify the tax. (*Appeal of Carr*, 2022-OTA-157P.) Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(c).) A preponderance of the evidence means the taxpayer must establish by documentation or other evidence the circumstances it asserts are more likely than not to be correct. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) An appellant’s failure to produce evidence that is within appellant’s control gives rise to a presumption that such evidence is unfavorable to the case. (*Appeal of Kwon et al.*, 2021-OTA-296P; *Appeal of Cookston* (83-SBE-048) 1983 WL 15434.)

Taxation of Limited Partnerships and DLPs in California

Every limited partnership doing business in California and required to file a return under R&TC section 18633 shall pay annually a tax of \$800 for the privilege of doing business in this state. (R&TC, §§ 17935(a), 23153.) For each tax year beginning on or after January 1, 1997, every limited partnership that has executed, acknowledged, and filed a Certificate with the California SOS shall pay annually the minimum limited partnership tax for the privilege of doing business in California until a certificate of cancellation is filed on behalf of the limited partnership with the California SOS. (R&TC, § 17935(b).)

California generally conforms to the federal entity classification rules of Internal Revenue Code section 7701 and the regulations issued thereunder (often referred to as the “check-the-box” regulations). (R&TC, § 23038(b)(2)(B)(ii), (iii).) The R&TC provides that “[i]f the separate existence of an eligible business entity is disregarded for federal tax purposes, the separate existence of that business entity shall be disregarded for purposes of this part, Part 10 (commencing with [R&TC s]ection 17001), and Part 10.2 (commencing with [R&TC s]ection 18401)⁴” (R&TC, § 23038(b)(2)(B)(iii).)

⁴ The remainder of R&TC section 23038(b)(2)(B)(iii) contains exceptions not relevant to this appeal.

FTB Legal Ruling 2019-02 (Legal Ruling 2019-02) provides that a taxpayer-partner which is recognized for federal income tax purposes is treated as a single owner of a domestic limited partnership if the taxpayer-partner wholly owns all other partners which are disregarded for federal income tax purposes unless the limited partnership elects to be classified as an association taxable as a corporation. Where the limited partnership makes no such election, it is a DLP. (See IRS Revenue Ruling 2004-77, 2004-31 I.R.B. 119.) Legal Ruling 2019-02 holds that DLPs are not subject to the annual limited partnership tax of \$800 and the partnership return filing requirements of R&TC sections 17935 and 18633.⁵

Analysis

Here, appellant analogizes its situation to Legal Ruling 2019-02 and contends that Trust is its taxpayer-partner and an entity recognized for federal income tax purposes. Appellant alleges that 4C4, LLC is an entity disregarded for federal income tax purposes. Appellant claims that Trust wholly owns 4C4, LLC. Appellant alleges that pursuant to the check-the-box regulations, Trust is the sole owner, and that its situation is identical to that of Legal Ruling 2019-02. Appellant concludes that it is a DLP and is not obligated to pay the annual limited partnership tax of \$800.

FTB contends that appellant has failed to prove it qualifies as a DLP. FTB asserts that the evidence in the record conflicts as to the identity of appellant's partners that qualify under Legal Ruling 2019-02. FTB also notes that appellant has failed to respond to its IDRs or clarify that its ownership structure qualifies as a DLP.

OTA agrees with FTB that the evidence in the record does not establish that appellant's partners were disregarded entities, which is a requirement under the "check-the-box" regulations to which California conforms. On one hand, the signed but undated LP Agreement, effective as of October 1, 2018, shows that appellant's partners were Trust and 4C4, LLC, and the

⁵ FTB Notice 2019-06 sets forth the process for establishing that a limited partnership is a DLP. It provides that the limited partnership should provide the following documentation to FTB to establish its proper treatment as a DLP:

1. The certificate of limited partnership, partnership agreement, organizational chart of ownership, and federal returns of the partners for the particular tax year or years in question; or
2. A declaration signed under penalty of perjury by the general partner of the limited partnership under local law . . . [additional requirements are provided if the limited partnership's general partner under local law is a limited liability company].

Amendment, dated June 24, 2020, supports that 4C4, LLC replaced CCI as appellant's partner.⁶ On the other hand, contemporaneous documentation filed with the California SOS during 2018, namely appellant's Certificate and the Correction, identify CCI as appellant's partner. OTA finds that the taxpayer has not established by documentation or other evidence the circumstances it asserts are more likely than not to be correct. (*Appeal of Estate of Gillespie, supra.*)

Furthermore, appellant failed to respond to FTB's IDR's on appeal. An appellant's failure to produce evidence within its control gives rise to a presumption that such evidence is unfavorable to its case. (*Appeal of Kwon et al., supra; Appeal of Cookston, supra.*)

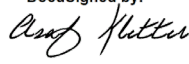
Therefore, appellant has failed to show that it was a DLP for the 2018 tax year.

HOLDING

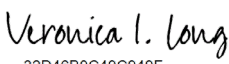
Appellant has not shown it was a DLP for federal income tax purposes and is not entitled to a refund of the \$800 annual limited partnership tax.


DISPOSITION

FTB's deemed denial of appellant's claim for refund is sustained.

DocuSigned by:

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 Asaf Kletter
 Administrative Law Judge

We concur:

DocuSigned by:

 32D46B0C49C949F
 Veronica I. Long
 Administrative Law Judge

DocuSigned by:

 88F35E2A835348D
 Ovsep Akopchikyan
 Administrative Law Judge

Date Issued: 5/30/2023

⁶ FTB claims that the LP agreement lists the Trust as the general partner and conflicts with the Amendment, but both agreements identify 4C4, LLC as the general partner.