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2024-OTA-038
Nonprecedential

OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	OTA Case No. 220710846
CORUNDUM DIVERSIFIED APARTMENT FUND IV AI LLC	

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: Buddy Newton, CPA

For Respondent: AnaMarija Antic-Jezildzic, Specialist

S. HOSEY, Administrative Law Judge: On May 22, 2023, the Office of Tax Appeals (OTA) issued an Opinion sustaining the action of respondent Franchise Tax Board (FTB) denying Corundum Diversified Apartment Fund IV AI LLC's (appellant) claim for refund for abatement of the late filing penalty imposed under Revenue and Taxation Code (R&TC) section 19172. In the Opinion, OTA held that appellant had not shown reasonable cause to abate the late filing penalty or applicable interest. Appellant timely filed a petition for rehearing (petition) under R&TC section 19334. Upon consideration of appellant's petition, OTA concludes it has not established a basis for rehearing.

OTA may grant a rehearing where one of the following grounds is met and materially affects the substantial rights of the party seeking a rehearing: (1) an irregularity in the proceedings which occurred prior to issuance of the Opinion and prevented fair consideration of the appeal; (2) an accident or surprise, occurring during the appeal proceedings and prior to the issuance of the Opinion, which ordinary caution could not have prevented; (3) newly discovered evidence, material to the appeal, which the filing party could not have reasonably discovered and provided prior to issuance of the Opinion; (4) insufficient evidence to justify the Opinion; (5) the Opinion is contrary to law; or (6) an error in law that occurred during the appeals hearing or proceeding. (Cal. Code Regs., tit. 18, § 30604(a)(1)-(6); *Appeal of Do*, 2018-OTA-002P.)

Appellant argues that the Opinion was contrary to law. Appellant asserts that it does not

owe the late filing penalty because it was not "doing business" in California and therefore not required to file a California tax return (and thus no tax payment was due).

The "contrary to law" standard of review shall involve a review of the Opinion for consistency with the law. (Cal. Code Regs., tit. 18, § 30604(b).) To find that the Opinion is contrary to law, OTA must determine whether the Opinion is "unsupported by any substantial evidence." (*Appeal of Graham and Smith*, 2018-OTA-154P, citing *Sanchez-Corea v. Bank of America* (1985) 38 Cal.3d 892, 906 (*Sanchez-Corea*).) This requires a review of the Opinion to indulge "in all legitimate and reasonable inferences" to uphold the Opinion. (*Sanchez-Corea*, *supra*, 38 Cal.3d at p. 907.) The relevant question is not over the quality or nature of the reasoning behind the Opinion, but whether the Opinion can or cannot be valid according to the law. (*Appeals of Swat-Fame, Inc. et. al*, 2020-OTA-045P.) In OTA's review, the panel considers the evidence in the light most favorable to the prevailing party. (*See Sanchez-Corea, supra*, 38 Cal.3d at. p. 907.)

With respect to appellant's argument that it did not owe the late filing penalty because it was not "doing business" in California under R&TC section 23101, this was not actually at issue on appeal. Rather, this appeal stemmed from the denial of appellant's claim for refund for abatement of the late filing penalty imposed under R&TC section 19172.[1] As stated in the Opinion, appellant did not take proper steps to confirm that its return was correctly filed and, as a result, remained unaware that its 2018 tax return had not been filed until approximately two years after the filing deadline. Appellant has not established how the Opinion was contrary to law or any other grounds for a rehearing regarding the abatement of the late filing penalty or interest.

Furthermore, appellant's argument that it did not have a California filing requirement also lacks merit. Based on the record, appellant had a filing requirement for the 2018 tax year because, pursuant to R&TC section 18633(a)(1), every partnership shall file a return stating specifically the items of gross income and deductions allowed for that tax year. Appellant

[1] A limited liability company (LLC) doing business in California must pay an annual $800 LLC tax for the privilege of doing business in this state. (R&TC, §§ 17941(a), 23153(d)(1).) For taxable years beginning on or after January 1, 2011, subdivisions (a) and (b) of R&TC section 23101 contain two alternative tests for doing business, and the satisfaction of either test leads to a nexus finding. (*Appeal of GEF Operating, Inc*., 2020-OTA-057P.) In the underlying appeal, appellant sought abatement of the per-partner late filing penalty, which is imposed pursuant to R&TC section 19172, when a partnership (or an LLC taxed as a partnership) fails to file a return at the time prescribed unless it is shown that the failure was due to reasonable cause.

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concedes that it was issued a Schedule K-1 from Griffis Premium Apartment Fund IV AI, which reflects California source losses for the 2018 tax year. As such, appellant was required to report gross income for the 2018 tax year under R&TC section 18633(a)(1).

Accordingly, OTA denies appellant's request for rehearing.

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Sara A Hosey
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Sara A. Hosey
Administrative Law Judge

We concur:

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Suzanne B. Brown
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Suzanne B. Brown
Administrative Law Judge

DocuSigned by:
Amanda Vassigh
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Amanda Vassigh
Administrative Law Judge

Date Issued: 11/15/2023