

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
)
MURRIETA COMMERCIAL LAND)
PROPERTIES #2)
)
)

OPINION

Representing the Parties:

For Appellant: Timothy Gamar, General Partner

For Respondent: Bradley J. Coutinho, Attorney Supervisor

For Office of Tax Appeals: Louis Ambrose, Attorney

H. LE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Murrieta Commercial Land Properties #2 (appellant) appeals actions by respondent Franchise Tax Board (FTB) denying appellant’s claims for refund of \$3,672 for the 2013 tax year, \$3,024 for the 2014 tax year, \$3,024 for the 2015 tax year, \$3,672 for the 2016 tax year, \$3,456 for the 2017 tax year, \$3,456 for the 2018 tax year,¹ and \$2,304 for the 2019 tax year.

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

ISSUE

Whether appellant has established reasonable cause for the late filing of partnership returns.

¹ The Office of Tax Appeals accepted the 2018 tax year as a deemed denial of a claim for refund. (Cal. Code Regs., tit. 18, § 30103(a)(4).)

FACTUAL FINDINGS

1. FTB untimely received appellant's 2013, 2014, 2015, and 2016 California partnership tax returns (Form 565) on December 15, 2020. Those returns reported no tax owed and 17 partners in 2013, 14 partners in 2014, 14 partners in 2015, and 17 partners in 2016. FTB also untimely received appellant's 2017 Form 565 on March 9, 2021, and appellant's 2018 and 2019 Forms 565 on March 1, 2021. On its returns, appellant reported no tax owed and 16 partners for each of those tax years.
2. FTB imposed per-partner late filing penalties of \$3,672 for the 2013 tax year, \$3,024 for the 2014 tax year, \$3,024 for the 2015 tax year, \$3,672 for the 2016 tax year, \$3,456 for the 2017 tax year, \$3,456 for the 2018 tax year, \$2,304 for the 2019 tax year.
3. Appellant remitted payments that satisfied the balances owed for the tax years at issue. On November 2, 2022, appellant filed claims for refund for the tax years at issue. FTB failed to act on appellant's 2018 tax year claim for refund. For the remaining claims for refund, FTB denied those claims by letters dated March 29, 2023. Appellant filed this timely appeal.

DISCUSSION

When a partnership fails to file its return on or before the due date, FTB shall impose a late filing penalty, unless the late filing is shown to be due to reasonable cause. (R&TC, § 19172(a).) The penalty is calculated at a rate of \$18 for each month the return is late up to a maximum of 12 months, multiplied by the number of partners in the partnership. (R&TC, § 19172(b).)

When FTB imposes a penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) The burden of proof is on the taxpayer to show that reasonable cause exists to support abatement of the penalty. (*Ibid.*) To establish reasonable cause, a taxpayer must show that failure to file a timely return occurred despite the exercise of ordinary business care and prudence. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) Where a taxpayer asserts that they were unable to obtain necessary tax information, they must show the efforts made to acquire the information from the source that held it. (*Appeal of Moren*, 2019-OTA-176P.) Unsupported assertions are not sufficient to satisfy this burden of proof. (*Ibid.*)

Appellant contends that its managing partner died in 2008 and the trustee of the managing partner's trust took control of appellant. Appellant's representative, who indicates he is a general partner of appellant, states that the trustee denied him access to documents so that he could not timely file the returns. According to appellant, the trustee died in 2019 and she had instructed her daughter not to allow the partners access to partnership records until a new trustee was appointed by the court. Appellant states that, when the new trustee was appointed, the partners reviewed the records and determined that the trustee had not filed returns since 2012. Appellant contends that the partners attempted to obtain appellant's bank account information, but those requests were denied because the trustee held the account as the executor of the managing partner's estate. Appellant further contends that the partners were required to reopen the probate proceedings to transfer the bank account to the new trustee and that the partners obtained the bank account information and closed the account on March 14, 2021. Appellant asserts that, despite the repeated efforts of one of the partners, the former trustee denied the partner access to the information necessary to file timely returns.

However, appellant has not provided any evidence on appeal to support its contentions.² Therefore, there is no evidence to show that appellant acted reasonably or to substantiate the nature and timing of any efforts that were undertaken. Thus, appellant has not shown that the failure to file timely returns occurred despite the exercise of ordinary business care and prudence.

² FTB's brief noted that appellant had not provided any documentation to support its contentions. The Office of Tax Appeals provided an opportunity for appellant to reply to FTB's brief, and noted to appellant that, if it had not already done so, it should provide all documentation relied on to support its appeal. However, appellant did not file a reply brief and has not provided any documentation to corroborate its contentions.

HOLDING

Appellant has not established reasonable cause for the late filing of partnership returns.

DISPOSITION

FTB’s actions denying the claims for refund are sustained.

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Huy "Mike" Le
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Huy "Mike" Le
Administrative Law Judge

We concur:

DocuSigned by:
Kenneth Gast
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Kenneth Gast
Administrative Law Judge

DocuSigned by:
Veronica I. Long
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Veronica I. Long
Administrative Law Judge

Date Issued: 7/25/2024