

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
GOSU, LLC ) OTA Case No. 230613645  
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**OPINION**

Representing the Parties:

For Appellant: Stanley Chen

For Respondent: Alisa L. Pinarbasi, Attorney

For Office of Tax Appeals: Andrew Jacobson, Attorney

K. WILSON, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Gosu, LLC (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$800, a late filing penalty of \$200, a notice and demand (demand) penalty of \$200, a filing enforcement fee of \$81, and applicable interest for the 2018 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 is liable for the annual minimum limited liability company (LLC) tax.
2. Whether appellant has established reasonable cause for the abatement of the late filing penalty.
3. Whether appellant has established reasonable cause for the abatement of the demand penalty.
4. Whether appellant has established grounds for abating the filing enforcement fee.

### FACTUAL FINDINGS

1. On February 16, 2017, appellant, an LLC, filed its Articles of Organization with the California Secretary of State (SOS). The articles show a business address in Oakland, California and state that appellant will be managed by all LLC members.
2. On November 9, 2022, FTB issued a Demand for Tax Return (Demand). The Demand required appellant to respond by December 14, 2022.
3. Appellant did not timely respond to the Demand.
4. On February 6, 2023, FTB issued a Notice of Proposed Assessment (NPA) to appellant for the 2018 tax year, which proposed to assess an annual minimum LLC tax of \$800, a late filing penalty of \$200, a demand penalty of \$200, and a filing enforcement fee of \$81, plus applicable interest.
5. In a letter to FTB dated February 9, 2023, appellant protested the 2018 NPA on the grounds that it was inactive during the 2018 tax year and that it did not return to active status until 2019.
6. On May 23, 2023, FTB issued a Notice of Action that affirmed its 2018 NPA.
7. Appellant timely filed this appeal.

### DISCUSSION

#### Issue 1: Whether appellant is liable for the annual minimum LLC tax.

##### Burden of Proof

FTB's determination of tax is presumed to be correct, and a taxpayer has the burden of proving error. (*Appeal of GEF Operating, Inc.*, 2020.OTA-057P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid.*) FTB's determinations cannot be successfully rebutted when the taxpayer fails to provide credible, competent, and relevant evidence as to the issues in dispute. (*Ibid.*)

##### Annual Minimum LLC Tax

As relevant to this appeal, R&TC section 17941 provides that every LLC is required to pay an annual minimum tax to California for the privilege of doing business in this state if any of three requirements is met: (1) the LLC is "doing business" in this state as defined in R&TC section 23101; (2) the LLC's articles of organization have been accepted by the SOS; or (3) a

certificate of registration has been issued by the SOS. (R&TC, § 17941(a), (b).) Under R&TC section 17941(c), the annual minimum LLC tax is due “on or before the 15th day of the fourth month of the taxable year.” For the 2018 tax year, the annual minimum LLC tax was \$800. (R&TC, §§ 17941(a), 23153(d)(1).) Here, there is no dispute that appellant was organized in California on February 16, 2017, and that appellant’s articles were accepted by the SOS. On appellant’s 2019 California S Corporation Franchise or Income Tax Return (Form 100S), appellant reported that it had been doing business in California since February 16, 2017. Therefore, the evidence shows that appellant was organized and doing business in California during 2018 and is liable for the annual minimum LLC tax unless an exception applies. (R&TC, § 17941(a), (b)(1).)

#### Single-Member LLC

Single-member LLCs may elect to be taxed as corporations. Upon such an election, the LLC is taxed as a separate entity from its owner. (*Bunzl Distribution USA, Inc. v. FTB* (2018) 27 Cal.App.5th 986, 993; see also *Appeal of Patient Comfort Services, LLC*, 2021-OTA-300P.) However, “where an LLC elects not to be taxed as a corporation, its status as a separate entity is ‘disregarded’ for income tax purposes, and it is taxed as part of its owner.” (*Bunzl Distribution USA, Inc. v. FTB, supra*, 27 Cal.App.5th at p. 993.) California law allows for the assessment of the annual minimum LLC tax even when the LLC is a single-member LLC that is a disregarded entity for most tax purposes. (R&TC, § 23038(b)(2)(B)(iii); Cal. Code Regs., tit. 18, § 23038(b)-2(c)(2)(A); see also *Appeal of Wright Capital Holdings LLC*, 2019-OTA-219P.) A disregarded LLC also has an obligation to file a California income tax return. (R&TC, § 18633.5(i)(1).)

Appellant does not dispute that it was a single-member LLC during 2018 and did not elect to be taxed as a corporation for 2018, and on appellant’s 2019 Form 100S, appellant reported that the “effective date of federal S election” was January 1, 2019, which is after the 2018 tax year at issue. Therefore, OTA finds that appellant was a single-member LLC during the 2018 tax year and subject to the provisions of R&TC section 17941.

#### Exceptions to Imposition of the LLC Annual Minimum Tax

R&TC section 17941(b)(1) states that an LLC shall pay the annual minimum tax for each tax year, or part thereof, until a certificate of cancellation of registration or of articles of

organization is filed with the SOS. As relevant to this appeal, R&TC section 17941(b)(2) provides that if a taxpayer files a return that is designated as its final return, FTB shall notify the taxpayer that the annual tax shall continue to be due annually until a certificate of dissolution or cancellation is filed with the SOS pursuant to Corporations Code section 17707.08 or 17708.06.

The R&TC does not provide a “reasonable cause” exception to the annual minimum LLC tax imposed under R&TC section 17941. (*Appeal of Patient Comfort Services, LLC, supra.*) However, there are two statutory exceptions to the imposition of the annual minimum LLC tax. Under R&TC section 17946, no annual minimum LLC tax is due if two conditions are met: (1) the LLC did no business in this state during the tax year, and (2) the tax year was 15 days or less. Under R&TC section 17947, no annual minimum LLC tax is due if the LLC does all of the following: (1) files with FTB a timely final annual tax return for the preceding tax year; (2) does not do business in this state after the end of the tax year for which the final annual tax return was filed; and (3) in relevant part files a certificate of dissolution with the SOS before the end of the 12-month period beginning with the date the final annual tax return was filed.

Appellant asserts that it did not engage in any business activities until June of 2019, when it purchased the assets of another company. R&TC section 17946 is only applicable if the LLC’s tax year was 15 days or less, which is not the case here. In addition, R&TC section 17947 does not apply because appellant neither filed a final tax return during the 2017 tax year, nor filed a certificate of dissolution with the SOS 12 months after filing a final annual tax return.<sup>1</sup> (R&TC, § 17947(a)(1).)

Therefore, appellant has failed to satisfy the requirements of R&TC sections 17946 and 17947 and is liable for the annual minimum LLC tax of \$800.

Issue 2: Whether appellant has established reasonable cause for the abatement of the late filing penalty.

R&TC section 19131 imposes a penalty for a taxpayer’s failure to file a return on or before the due date, unless it is shown that the late filing is due to reasonable cause and not willful neglect. (R&TC, § 19131(a).) The amount of the late filing penalty imposed by R&TC section 19131 is five percent of the tax due, after allowing for timely payments, for every month or fraction of a month that the return is late, but the penalty may not exceed 25 percent of the

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<sup>1</sup> Appellant also states that it was doing business in 2019.

amount of tax due. (*Ibid.*) Appellant does not contend that the late filing penalty was improperly imposed or computed. After a review of the evidence, OTA finds that FTB properly imposed the late filing penalty.

Instead, appellant raises the same arguments that it asserted relative to the annual minimum LLC tax, which OTA interprets as a reasonable cause argument. In the case where a taxpayer seeks to establish that a failure to act was due to reasonable cause, the taxpayer must show that the failure occurred despite the exercise of ordinary business care and prudence, or that cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of Summit Hosting, 2021-OTA-216P.*)

As discussed above, appellant's alleged lack of business activities during the 2018 tax year does not excuse its failure to file a state income tax return as required under California law. (R&TC, § 17941(a), (b)(1), (c).) Ignorance or a misunderstanding of the law generally does not excuse a taxpayer's noncompliance with California tax laws. (*Appeal of Wright Capital Holdings LLC, supra.*) Therefore, appellant has failed to show reasonable cause for the abatement of the late filing penalty.

Issue 3: Whether appellant has established reasonable cause for the abatement of the demand penalty.

R&TC section 19133 provides that if a taxpayer fails to make and file a return upon notice and demand by FTB, then FTB may impose a demand penalty of 25 percent of the amount of any tax assessment pertaining to the assessment of which the information or return was required unless the taxpayer's failure is due to reasonable cause. The burden of proving reasonable cause for failing to file upon demand is on the taxpayer. (*Appeal of GEF Operating, Inc., supra.*) To establish reasonable cause, a taxpayer's failure to respond to a demand must be such that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Patient Comfort Services, LLC, supra.*)

Once again, appellant does not contend that the demand penalty was improperly imposed or computed, nor does it dispute that the penalty may be properly applied to a single-member LLC that is disregarded for California income tax purposes. (*Appeal of Patient Comfort Services, LLC, supra.*) After a review of the evidence, OTA finds that FTB properly imposed the demand penalty.

Appellant once again advances the reasonable cause argument that OTA should take into account its alleged lack of business activities during the 2018 tax year. However, appellant has provided no evidence of any steps it took to timely respond to the November 9, 2022 Demand by the December 14, 2022 due date. Appellant does not explain or provide evidence to show why it failed to respond to the Demand, or how this failure was due to its alleged lack of business activities. Indeed, appellant has conceded that it had business activity beginning in June 2019, which means that its management should have been able to timely respond to the Demand during November and December of 2022.

Therefore, appellant has not met its burden of proof to show that the demand penalty should be abated.

Issue 4: Whether appellant has established grounds for abating the filing enforcement fee.

R&TC section 19254(a)(2) provides that if a taxpayer fails or refuses to make and file a tax return within 25 days after FTB mails to that taxpayer a formal legal demand to file the tax return, FTB will impose a filing enforcement fee. Once properly imposed, there is no provision in the R&TC which would excuse FTB from imposing the filing enforcement fee under any circumstances, including reasonable cause. (*Appeal of Wright Capital Holdings LLC, supra.*)

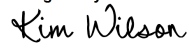
Here, FTB informed appellant in its Demand that appellant would be subject to the filing enforcement fee if appellant did not file a 2018 California return by December 14, 2022. As previously noted, appellant did not file a return by the deadline. Therefore, FTB properly imposed the filing enforcement fee, and there is no basis to abate it.

HOLDINGS

1. Appellant is liable for the annual minimum LLC tax.
2. Appellant has failed to establish reasonable cause for the abatement of the late filing penalty.
3. Appellant has failed to establish reasonable cause for the abatement of the demand penalty.
4. Appellant has failed to establish grounds for abating the filing enforcement fee.


DISPOSITION

FTB’s action is sustained.


Signed by:  
  
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Kim Wilson  
Hearing Officer

We concur:

Signed by:  
  
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Josh Lambert  
Administrative Law Judge

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Cheryl L. Akin  
Administrative Law Judge

Date Issued: 10/10/2024