

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
PANADYNE, INC) OTA Case No. 221111758
)
)
)
)

OPINION

Representing the Parties:

For Appellant: Allen J. Haurin, CPA

For Respondent: Alisa L. Pinarbasi, Attorney

For Office of Tax Appeals: Linda Frenklak, Attorney

S. ELSOM, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Panadyne, Inc (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$44,550.06, a notice and demand (demand) penalty of \$11,137.51, a late filing penalty of \$11,137.51, a filing enforcement fee of \$83, and applicable interest for the 2018 tax year.¹

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

ISSUES

1. Whether appellant’s failure to timely file a California return was due to reasonable cause.
2. Whether appellant’s failure to timely respond to the Demand for Tax Return (Demand) was due to reasonable cause.

¹ Appellant filed a 2018 return while the appeal was pending, which FTB accepted as filed. Based on the 2018 return, FTB reduced the proposed additional tax to the minimum franchise tax of \$800, the late filing penalty to \$200, and the demand penalty to \$200. Appellant paid the minimum franchise tax of \$800 but did not pay the late filing penalty, the demand penalty, or accrued interest. Appellant does not present any arguments concerning the filing enforcement fee of \$83 or accrued interest. In its reply brief, appellant only argues that it is entitled to abatement of the late filing penalty and the demand penalty. Consequently, this Opinion will address whether appellant is entitled to abatement of the penalties, but will not address whether appellant was subject to the minimum franchise tax of \$800 or whether it is entitled to abatement of the filing enforcement fee of \$83 or accrued interest.

FACTUAL FINDINGS

1. FTB received information from the Employment Development Department that appellant paid California employer withholding taxes for the 2018 tax year.
2. FTB issued to appellant a Demand dated October 27, 2021, which required that appellant do one of the following by December 1, 2021: (1) file a 2018 California return and pay the appropriate tax, penalties, interest, and fees if appellant needed to file a 2018 California return; (2) if appellant had already filed a 2018 return, complete specific parts of FTB 4694 ENS, Nonqualified Business Entity Questionnaire (Questionnaire) and submit it to FTB; or (3) if appellant was unsure whether it had a California filing requirement, complete specific parts of the Questionnaire and submit it to FTB.
3. Due to appellant's failure to respond to the Demand, FTB issued a Notice of Proposed Assessment (NPA) to appellant dated January 31, 2022. The NPA proposed tax of \$44,550.06, a demand penalty of \$11,137.51, a late filing penalty of \$11,137.51, and a filing enforcement fee of \$83, plus interest.
4. Appellant timely protested the NPA, stating that it had no physical presence in California, that it registered to pay California withholding and unemployment taxes because it had one employee who lived in California, and further, that the California employee did not generate any income for appellant.
5. FTB subsequently issued a Notice of Action to appellant affirming the NPA.
6. This timely appeal followed.
7. With its appeal, appellant provided the Office of Tax Appeals (OTA) with a completed and signed Questionnaire for the 2018 tax year. On the Questionnaire, appellant stated that it had total payroll within California of \$45,750 and total sales within California of \$22,831.
8. On June 16, 2023, while the appeal was pending, appellant filed a California Corporation or Franchise Income Tax return (Form 100) with FTB for calendar tax year 2018, reporting net income for tax purposes of \$2,785 and a minimum franchise tax of \$800. Appellant reported that it began doing business in California on March 1, 2018, and the 2018 return was its first California return. On June 5, 2023, appellant remitted a payment of \$800 for tax year 2018.

9. FTB accepted appellant's 2018 return as filed. Based upon appellant's reporting, FTB agrees to revise appellant's tax adjustment (as stated in the NPA and NOA) to the minimum franchise tax of \$800,² recalculates a late filing penalty and demand penalty of \$200 each, and continues to impose a filing enforcement fee of \$83, plus applicable interest.

DISCUSSION

Issue 1: Whether appellant's failure to timely file a California return was due to reasonable cause.

R&TC section 19131 imposes a penalty when a taxpayer fails to file a return on or before the filing due date, unless the taxpayer shows that the failure is due to reasonable cause and not due to willful neglect.³ The penalty is calculated at five percent of the tax liability for each month or fraction thereof the return is past due, up to a maximum of 25 percent. (R&TC, § 19131.) When FTB imposes a penalty, there is a rebuttable presumption that the penalty was properly imposed. (*Appeal of Xie*, 2018-OTA-076P.) The taxpayer has the burden of proving that reasonable cause exists to support the abatement of a penalty. (*Ibid.*)

To establish reasonable cause, the taxpayer must show that the failure to file a timely return occurred despite the exercise of ordinary business care and prudence, or that such cause existed as would prompt an ordinarily prudent businessperson to have so acted under similar circumstances. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) Even if a taxpayer is unaware of a California filing requirement, ignorance of the law is not an excuse for failing to file a timely return. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.)

Appellant's return for calendar tax year 2018 was due on or before the original filing date of April 15, 2019, or the extended filing date of November 15, 2019.

² Under R&TC section 23153(b)(3), every corporation doing business in California is subject to the minimum franchise tax. In its opening brief, appellant argues that it was not doing business in California as it did not meet the bright-line sales, property, or payroll thresholds in R&TC section 23101(b). However, FTB determined that appellant was doing business in California pursuant to R&TC section 23101(a) due to appellant's California employee. On appeal, FTB does not assert that appellant's 2018 California sales, property or payroll exceed bright-line threshold limits necessary to establish nexus under R&TC section 23101(b). As a result, OTA does not further address appellant's argument relating to the bright-line thresholds in R&TC section 23101(b). (See *Appeal of GEF Operating, Inc.*, 2020-OTA-057P [a taxpayer that does not meet the bright-line thresholds provided in R&TC section 23101(b), may still be found to be doing business in California under the general doing business standard provided in R&TC section 23101(a)].)

³ Because FTB does not assert willful neglect, the only issue is whether appellant has demonstrated reasonable cause for the late filing of its California return.

(R&TC, §§ 18601(a), 18604(a).) Appellant filed its 2018 return on June 16, 2023, while this appeal was pending. Therefore, FTB properly imposed the late filing penalty.

Appellant does not dispute that it had a California filing requirement in 2018,⁴ or that FTB properly calculated and imposed the late filing penalty. Instead, appellant asserts that it filed its return late because it did not believe it had a California filing requirement. As a result, appellant asserts it has reasonable cause for the late filing of its return. Appellant specifically states, “The returns in question were filed late, however we do not feel this was . . . willful neglect.” In support of its argument, appellant states that it did not have a physical presence in California, it had one employee who lived in California whose duties were strictly administrative, and its California sales and payroll did not exceed threshold limits that establish California nexus.

Appellant’s contention that it was unaware of its California filing requirement does not demonstrate that appellant acted as an ordinary intelligent and prudent businessperson. Appellant does not describe what efforts, if any, it took to ascertain whether it had a California filing requirement. Taxpayers who fail to acquaint themselves with the requirements of California tax law have not exercised ordinary business care and prudence. (*Appeal of Summit Hosting LLC*, 2021-OTA-216P.) Appellant’s claimed ignorance of its California filing requirement does not constitute reasonable cause for failing to file a timely return. (*Appeal of GEF Operating, Inc.*, *supra*.) As a result, appellant has not established reasonable cause for its failure to file a return timely.

Issue 2: Whether appellant’s failure to timely respond to the Demand was due to reasonable cause.

R&TC section 19133 imposes a penalty when a taxpayer fails to respond to a Demand to file a return or provide information by the Demand’s stated deadline unless the failure was due to reasonable cause and not due to willful neglect. The demand penalty is calculated at 25 percent of the proposed tax liability. (R&TC, § 19133.)

Appellant did not respond to the Demand by its stated deadline of December 1, 2021. Instead, appellant produced the completed Questionnaire to OTA during this appeal, and it filed a 2018 return with FTB while the appeal was pending. Appellant does not dispute FTB’s

⁴ Appellant does not provide any argument or information to rebut FTB’s determination regarding appellant’s 2018 filing requirement. Appellant specifically states that “[t]he state believes an employee living in California satisfies the requirement of doing business”, and further that it “[f]iled a 2018 return and paid the minimum franchise tax of \$800 [in] hopes any relating penalties would be abated.”


revised calculation of the demand penalty or the imposition of it,⁵ and instead presents the same reasonable cause arguments for abatement as argued for the late filing penalty. However, even if appellant did not believe that it had a California filing requirement, it was still required to complete and produce the Questionnaire to FTB within the prescribed period described in the Demand. As a result, appellant has not established reasonable cause to abate the demand penalty.

HOLDINGS

1. Appellant has not established that its failure to timely file a California return was due to reasonable cause.
2. Appellant has not established that its failure to timely respond to the Demand was due to reasonable cause.


DISPOSITION

FTB’s action is revised, as conceded by FTB, to reduce the tax to the minimum franchise tax of \$800, the late filing penalty to \$200, and the demand penalty to \$200. FTB’s action is otherwise sustained.


Signed by:

6846D432E2254FD...

 Seth Elsom
 Hearing Officer

We concur:

Signed by:

CB4F7DA37831418...

 Josh Lambert
 Administrative Law Judge

DocuSigned by:

3AF5C325B030456...

 Kenny Gast
 Administrative Law Judge

Date Issued: 12/10/2024

⁵ Because FTB does not assert willful neglect, the only issue is whether appellant has demonstrated reasonable cause for failing to timely respond to the Demand.