

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
DIET STANDARDS LLC) OTA Case No. 230613542
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)

OPINION

Representing the Parties:

For Appellant: Michael Burngasser, President

For Respondent: Christopher T. Tuttle, Attorney

For Office of Tax Appeals: Amber Poon, Attorney

E. PARKER, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19331, Diet Standards LLC (appellant) appeals respondent Franchise Tax Board’s (FTB) deemed denial of appellant’s claim for refund of \$1,127.50¹ for the 2019 tax year.

Appellant waived the right to an oral hearing; therefore, the matter was submitted to the Office of Tax Appeals (OTA) on the written record pursuant to California Code of Regulations, title 18, section 30209(a).

ISSUES

1. Whether appellant was doing business in California and, therefore, subject to the annual \$800 limited liability company (LLC) tax for the 2019 tax year.
2. Whether appellant has established a basis to abate the demand penalty for the 2019 tax year.
3. Whether appellant has established a basis for interest abatement.

¹ Appellant claimed a refund of its \$1,657.53 payment for the 2019 tax year. On appeal, FTB provides evidence that it credited \$533.50 to appellant’s 2020 tax year account, and made adjustments to appellant’s 2019 tax year account totaling \$3.48; therefore, the amount on appeal is \$1,127.50.

FACTUAL FINDINGS

1. Appellant is a Delaware LLC based in Florida that sells products through Amazon. In 2019, appellant participated in Amazon's Fulfillment by Amazon (FBA) program, which, as relevant here, means that appellant owned inventory at Amazon warehouses (fulfillment centers) located in California and contracted with Amazon to ship appellant's products from those fulfillment centers to appellant's customers.
2. On April 20, 2022, FTB issued appellant a Demand for Tax Return (Demand) for the 2019 tax year, stating that FTB received information from the California Department of Tax and Fee Administration (CDTFA) indicating appellant derived income from California sources and may have a California filing requirement for the 2019 tax year. The Demand provided appellant with a May 25, 2022 deadline to: (1) file a return; (2) inform FTB that a return was already filed; or (3) complete a questionnaire to determine if appellant had a filing requirement. The Demand stated that if appellant did not respond in the prescribed manner by the deadline, FTB would assess, among other things, a demand penalty. Appellant failed to respond to the Demand by the deadline.
3. FTB issued appellant a Notice of Proposed Assessment (NPA) based on appellant's California sales reported to CDTFA and proposed to assess an annual tax of \$800, a per-partner late filing penalty of \$432, a demand penalty of \$200, and a filing enforcement fee of \$97, plus interest.
4. Appellant protested the NPA, claiming it did not have nexus in California and did not have a California filing requirement for the 2019 tax year.
5. FTB issued a determination letter stating that after reviewing the information provided by appellant, FTB determined appellant had a California filing requirement for the 2019 tax year and that the NPA was final and subject to collection action. Appellant later paid the balance due but did not file a return.
6. On November 29, 2022, FTB received appellant's letter formally requesting a refund of a \$1,657.53 payment made for the 2019 tax year.
7. On March 20, 2023, in response to a second Demand for the 2019 tax year, appellant filed a 2019 California LLC return, reporting total income of \$13,998, zero total tax and fee, payments of \$1,658, and claiming a refund of \$1,658.

8. FTB accepted the return and issued appellant a Return Information Notice – Zero Balance Refund, which revised appellant’s tax liability to \$800 and imposed a demand penalty of \$200, plus interest.²
9. Appellant’s claim for refund was deemed denied when FTB did not act on the claim within six months after the claim was filed. This appeal followed.

DISCUSSION

Issue 1: Whether appellant was doing business in California and, therefore, subject to the annual \$800 LLC tax for the 2019 tax year.

Appellant bears the burden of proving entitlement to its refund claim. (*Appeal of Aroya Investment I, LLC*, 2020-OTA-255P.) The applicable burden of proof standard is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(b).)

An LLC doing business in California, as defined in R&TC section 23101, must pay an annual LLC tax of \$800 for the privilege of doing business in this state. (R&TC, § 17941(a).) Doing business is defined in R&TC section 23101(a) as “actively engaging in any transaction for the purpose of financial or pecuniary gain or profit.” As relevant here, under R&TC section 23101(b)(2)-(4), a taxpayer is also considered to be doing business in California if it satisfies certain bright-line nexus threshold amounts of sales, property, or payroll. The satisfaction of either test leads to a finding that the taxpayer is doing business in California. (*Appeal of Aroya Investment I, LLC*, *supra*.)

Here, it is undisputed that appellant participated in Amazon’s FBA program, held inventory in Amazon warehouses located in California, and made sales to California customers in the 2019 tax year. FTB determined that appellant’s conduct was sufficient to show it actively engaged in a transaction for the purpose of financial or pecuniary gain or profit in California and thus satisfied the definition of doing business under R&TC section 23101(a). FTB also points to appellant’s reporting of California sales to CDTFAs to show that appellant initially agreed that there was substantial nexus that warrants a determination that it was doing business in California.

Appellant contends that a plain reading of R&TC section 23101 provides that doing business is established if a taxpayer meets the minimum sales, property, or payroll thresholds in R&TC section 23101(b)(2)-(4), and if none of those thresholds are satisfied, a taxpayer is not

² FTB removed the per-partner penalty because appellant reported it was a single member LLC and removed the filing enforcement fee. FTB credited appellant’s 2020 tax year account with the resulting refund, plus interest.

doing business and therefore not subject to the annual tax or a filing requirement. Appellant asserts that since it does not meet those thresholds, its small amount of inventory and sales in California during 2019 do not meet the definition of doing business.³

OTA disagrees with appellant's interpretation of R&TC section 23101. OTA has held that R&TC section 23101(b) does not provide an effective safe harbor from the general definition of doing business in R&TC section 23101(a). (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) Instead, the satisfaction of *either* subdivision (a) *or* (b) of R&TC section 23101 leads to a finding that the taxpayer is doing business in California. (*Appeal of Aroya Investment I, LLC, supra.*) Here, FTB bases its proposed assessment on R&TC section 23101(a), asserting that appellant was doing business in California because it was actively engaging in transactions for the purpose of financial or pecuniary gain or profit. Appellant agrees that it owned inventory at one or more of Amazon's California fulfillment centers and made sales to California customers but fails to explain how these activities do not meet the definition of doing business pursuant to R&TC section 23101(a).

Accordingly, OTA finds that appellant actively engaged in transactions in California for the purpose of financial or pecuniary gain or profit, thus satisfying the "doing business" standard under R&TC section 23101(a), even though its inventory and sales were below the threshold amounts under R&TC section 23101(b)(2) and (3) for the 2019 tax year. Therefore, appellant is subject to the annual \$800 LLC tax.

Issue 2: Whether appellant has established a basis to abate the demand penalty for the 2019 tax year.

California imposes a penalty for the failure to file a return or provide information upon FTB's demand to do so, unless reasonable cause prevented the taxpayer from responding to the demand. (R&TC, § 19133.) When FTB imposes a demand penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Wright Capital Holdings LLC*, 2019-OTA-219P.) The burden of proof is on the taxpayer to show that reasonable cause exists to support an abatement of the penalty. (*Ibid.*)

To establish reasonable cause, a taxpayer must show that the failure to reply to a demand occurred despite the exercise of ordinary business care and prudence. (*Appeal of Wright Capital Holdings LLC, supra.*) A taxpayer's reason for failing to respond must be such that an ordinarily intelligent and prudent businessperson would have acted similarly under the

³ Appellant estimates that it had California sales of \$13,998 and maintained a maximum inventory in California of \$2,333 in the 2019 tax year.

circumstances. (*Ibid.*) Ignorance or a misunderstanding of the law generally does not excuse a taxpayer's noncompliance with California tax law. (*Ibid.*)

The Demand informed appellant that if a response was not received by the deadline, FTB would propose to assess a demand penalty. Appellant provides no argument to justify its failure to timely respond to FTB's first Demand. Rather, appellant continues to argue that it is not subject to the annual \$800 LLC tax. However, ignorance of the law does not establish reasonable cause to abate a properly imposed penalty. (*Appeal of Wright Capital Holdings LLC, supra.*) Therefore, appellant has not established reasonable cause to abate the demand penalty.

Issue 3: Whether appellant has established a basis for interest abatement.

If any amount of tax is not paid by the due date, interest is required to be imposed from the due date until the date the taxes are paid. (R&TC, § 19101(a).) Interest is not a penalty but is compensation for the use of money that should have been paid to the state. (*Appeal of Moy*, 2019-OTA-057P.) Imposition of interest is mandatory, and it can only be abated in certain limited situations when authorized by law. (R&TC, § 19101(a); *Appeal of Balch*, 2018-OTA-159P.) To obtain relief from interest, appellant must qualify under R&TC section 19104 (unreasonable error or delay by FTB in the performance of a ministerial or managerial act) or 21012 (reasonable reliance on FTB's written advice).

Appellant does not allege that any statutory provision for interest abatement applies to the facts of this case, and the evidence in the record does not support a finding that any of the statutory provisions apply. Therefore, appellant has not established a basis for interest abatement.

HOLDINGS

1. Appellant was doing business in California and, therefore, subject to the annual \$800 LLC tax for the 2019 tax year.
2. Appellant has not established a basis to abate the demand penalty for the 2019 tax year.
3. Appellant has not established a basis for interest abatement.


DISPOSITION


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

DocuSigned by:

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 Erica Parker
 Hearing Officer

We concur:

Signed by:

 CB1E7DA37831416
 Josh Lambert
 Administrative Law Judge

DocuSigned by:

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 Asaf Kletter
 Administrative Law Judge

Date Issued: 10/7/2025