

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 240616383
BUZZWORTHY CLEANING LLC)
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OPINION

Representing the Parties:

For Appellant: W. Lee Prussman, CPA

For Respondent: Christopher T. Tuttle, Attorney

S. ELSOM, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Buzzworthy Cleaning LLC (appellant) appeals an action by the Franchise Tax Board (respondent) proposing additional tax of \$12,196.19, a late filing penalty of \$3,049.04, a notice and demand (demand) penalty of \$3,049.04, a per shareholder late filing penalty of \$432, a filing enforcement fee of \$86, and applicable interest for the 2020 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 has established error in respondent’s determination that appellant had a filing requirement and in respondent’s proposed assessment.
2. Whether appellant has established reasonable cause to abate the late filing penalty.
3. Whether appellant has established reasonable cause to abate the demand penalty.
4. Whether appellant has established reasonable cause to abate the per shareholder late filing penalty.
5. Whether appellant has established a legal basis to abate the filing enforcement fee.

FACTUAL FINDINGS

1. As of the date briefing closed in this appeal, appellant did not file a 2020 California return.¹
2. On February 15, 2023, respondent sent appellant a Demand for Tax Return (Demand), informing appellant that respondent received information from the California Employment Development Department (EDD) indicating that appellant received income from California sources and may have a filing requirement for the 2020 tax year. The Demand required appellant to file a return, state whether appellant had already filed a return, or complete FTB form 4696 ENS, Nonqualified Business Entity Questionnaire (Questionnaire) to determine if appellant had a filing requirement.
3. On March 1, 2023, appellant sent respondent the completed Questionnaire, explaining that appellant ceased operations on December 31, 2019, had zero property, payroll or sales in California, and sold its business in 2021.
4. On March 22, 2023, respondent sent appellant a Determination of Filing Requirement letter informing appellant that respondent reviewed appellant's response to the Demand and determined that appellant had a California filing requirement. Respondent stated that if appellant did not file a return by April 21, 2023, respondent will estimate appellant's tax based upon income or estimated income information it received, and may also impose a late filing penalty, a demand penalty, and a filing enforcement fee, plus applicable interest. Appellant did not respond.
5. On December 26, 2023, respondent sent appellant a Notice of Proposed Assessment (NPA) stating that respondent received information indicating appellant paid employer withholding taxes in California during the 2020 tax year. Based upon the average income reported by businesses in appellant's industry, respondent estimated appellant had received income of \$813,079. The NPA proposed to assess tax of \$12,196.19, impose a late filing penalty of \$3,049.04, a demand penalty of \$3,049.04, a per shareholder filing penalty of \$432, and a filing enforcement fee of \$86, plus applicable interest, for a total balance due of \$20,593.23.
6. On January 15, 2024, appellant protested the NPA. Appellant stated that it "never did business in nor received revenue from the state of California. The owner paid her

¹ On appeal, respondent provides a 2019 Form 100S California S Corporation Franchise or Income Tax Return filed by appellant, which is not reported as a final year return. Because appellant, an LLC, filed as an S corporation in the tax year prior to the tax year at issue in this appeal, OTA reviews appellant's filing requirement for the 2020 tax year at issue here as it relates to S corporations.

- daughter, who lived in California, one time only through a payroll check for work she did on the company's website.” Appellant again provided the Questionnaire, but it now reported that appellant was sold in April 2021 and then ceased operations.
7. Respondent subsequently sent appellant a Notice of Action (NOA) denying appellant’s protest. Respondent’s NOA affirmed the NPA’s tax, penalties, and filing enforcement fee, plus applicable interest, for a total balance due of \$21,117.55.
 8. This timely appeal followed.
 9. On appeal, respondent reduces its proposed assessment of tax to \$800, and recalculates a late filing penalty of \$200, a demand penalty of \$200, a per shareholder late filing penalty of \$216, and a filing enforcement fee of \$86.
 10. On appeal, respondent provides EDD forms DE 9, Quarterly Contribution Return and Report of Wages, and DE 9C, Quarterly Contribution Return and Report of Wages (Continuation), reporting total wages paid by appellant of \$973 on July 20, 2020, and supplemental wages paid of \$153 on July 30, 2020.

DISCUSSION

Issue 1: Whether appellant has established error in respondent’s determination that appellant had a filing requirement and proposed assessment.

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

All corporations that are “doing business” in California are required to file a California return and pay the annual minimum franchise tax. (R&TC, §§ 18601(a)(1); 23153(b)(3).) For the 2020 tax year, the filing deadline for S corporations was the 15th day of the third month after the close of the taxable year, and the amount of the minimum franchise tax is \$800. (R&TC, §§ 18601(d)(1); 23153(d)(1).) “Doing business” under R&TC section 23101(a) is defined as “actively engaging in any transaction for the purpose of financial or pecuniary gain or profit.” For the purpose of R&TC section 23101(a), the word “actively” has been interpreted as the opposite of passively or inactively and means the active participation in any transaction for the purpose of a financial or pecuniary gain or profit. (*Golden State Theatre & Realty Corp. v. Johnson* (1943) 21 Cal.2d 493, 496 [construing predecessor to R&TC section 23101(a)].) The transaction does not need to result in an actual profit for purposes of R&TC section 23101(a), and the relevant

inquiry is whether the activity or transaction was motivated by a financial or pecuniary gain or profit. (*Hise v. McColgan* (1944) 24 Cal.2d 147; *Appeal of Columbia Supply Co.* (60-SBE-012) 1960 WL 1391.) R&TC section 23101 was amended for taxable years beginning on or after January 1, 2011, to provide that, in *addition* to the definition provided in R&TC section 23101(a), for taxable years beginning on or after January 1, 2011, a taxpayer is “doing business” in California if the taxpayer is organized or commercially domiciled in California or exceeds brightline thresholds for California sales, property, or payroll.²

Here, respondent obtained information from the EDD that appellant reported payment of wages of \$973 and \$153 on July 20, 2020, and July 30, 2020, respectively, and was doing business in California during the 2020 tax year under R&TC section 23101(a). Respondent’s determination is presumed to be correct, and appellant thus has the burden of proving error. (*Appeal of GEF Operating, Inc., supra.*)

On appeal, appellant asserts that it “never did business in nor received revenue from the state of California;” the “business was sold in April 2021 and then closed;”³ and that its owner made a one-time payment to her daughter, who lived in California, for work her daughter did on appellant’s website. Thus, appellant appears to argue that because it did not receive income from California sources during the 2020 tax year, the payments it made to the owner’s daughter are insufficient to establish that appellant was doing business in California.

As stated above, any transaction that is motivated by financial or pecuniary gain or profit is considered doing business, regardless of whether profit is earned. (*Hise v. McColgan, supra*; 24 Cal. 2d at p. 147; *Appeal of Columbia Supply Co., supra.*) It is undisputed that appellant’s owner’s daughter lived in California while performing work on appellant’s website, and that appellant reported these payments as wage income to the EDD. Appellant’s transaction was motivated by financial or pecuniary gain and occurred within the state of California. Therefore, appellant satisfies the criteria for doing business under R&TC section 23101(a). Thus, appellant is required to pay a minimum tax of \$800 for the privilege of doing business in California during the 2020 tax year. (See R&TC, § 17941(a).)

² R&TC section 23101(b)(2)-(4) provides threshold tests for sales, property and payroll, respectively. The threshold amounts are revised annually under R&TC section 17041(h). Respondent does not assert that appellant exceeds these thresholds, and thus, OTA does not further address them.

³ Appellant’s March 22, 2023 and January 15, 2024 Questionnaires report conflicting dates on which appellant ceased operations, December 31, 2019, and April 2021, respectively. In either case, the determination of whether appellant received California source income from operating its business during the 2020 tax year is not relevant to the determination of doing business in this appeal, and OTA does not further address it.

Based on the foregoing, appellant has not established error in respondent's proposed assessment.

Issue 2: Whether appellant has established reasonable cause to abate the late filing penalty.

R&TC section 19131 provides that a late filing penalty shall be imposed when a taxpayer fails to file a tax return on or before its due date, unless the taxpayer establishes that the late filing was due to reasonable cause and was not due to willful neglect. The penalty is specified as five percent of the tax due for each month that a valid tax return is not filed after it is due, not to exceed 25 percent of the tax. (R&TC, § 19131(a).) To establish reasonable cause, the taxpayer "must show that the failure to file timely returns occurred despite the exercise of ordinary business care and prudence, or that cause existed as would prompt an ordinary intelligent and prudent businessman to have so acted under similar circumstances." (*Appeal of GEF Operating, Inc., supra.*)

Appellant does not argue that the late filing penalty was improperly calculated or imposed but instead contends that it was not required to file California a return. For the reasons discussed above, appellant was required to file a California return for the 2020 tax year. Appellant does not assert, and the record in this appeal does not establish, reasonable cause for the late filing of the return. Therefore, the late filing penalty cannot be abated.

Issue 3: Whether appellant has established reasonable cause to abate the demand penalty.

R&TC section 19133 provides in relevant part that if a taxpayer refuses to file a return upon notice and demand by respondent, unless the failure is due to reasonable cause and not willful neglect, respondent may impose a demand penalty. 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 must show that the failure to timely respond to a demand occurred despite the exercise of ordinary business care. (*Ibid.*) The taxpayer's reason for failing to respond to a demand must be such that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid.*)

Here, respondent sent a Demand to appellant on February 15, 2023, and a Determination of Filing Requirement letter on March 22, 2023, informing appellant that it must file a return and will be subject to the demand penalty if a return is not filed. As of the date of briefing closing for this appeal, appellant has not filed a 2020 return. Therefore, the requirements for imposing the demand penalty are satisfied.

Appellant does not argue, and the record in this appeal does not establish, reasonable cause for its failure to file a return. To the extent that appellant was unaware of its filing

requirement as a result of doing business in California during the 2020 tax year, ignorance of the law does not establish reasonable cause for failure to comply with statutory requirements. (*Appeal of Cremel and Koepfel*, OTA-2021-222P.) Thus, the demand penalty cannot be abated.

Issue 4: Whether appellant has established reasonable cause to abate the per shareholder late filing penalty.

California imposes a per shareholder late filing penalty on an S corporation for the failure to file a return on or before the due date, unless it is shown that the late filing is due to reasonable cause. (R&TC, § 19172.5(a).) For the 2020 tax year, appellant was required to file a return or before the 15th day of the third month following the close of its taxable year. (R&TC, § 18601(d)(1).) As of the date of this appeal, the record here does not establish that appellant has filed a 2020 Return.

Appellant does not argue that the per shareholder late filing penalty was improperly calculated or imposed, but as above, appellant argues that it was not required to file a California return for the 2020 tax year. Appellant does not assert, and the record in this appeal does not establish, reasonable cause for the failure to file its return. Therefore, the per shareholder late filing penalty may not be abated.

Issue 5: Whether appellant has established a basis to abate the filing enforcement fee.

R&TC section 19254 provides that if respondent mails a formal legal demand for a tax return to a taxpayer, a filing enforcement cost recovery fee is required to be imposed when the taxpayer fails or refuses to file the return within the 25-day period. Once properly imposed, there is no provision in the R&TC which would excuse respondent from imposing the fee under any circumstances, including reasonable cause. (R&TC, § 19254.)


Here, respondent informed appellant in the Demand that appellant may be subject to the filing enforcement cost recovery fee if appellant did not timely file a return. Appellant did not file a return within the period prescribed in the Demand. Therefore, respondent properly imposed the filing enforcement cost recovery fee and the filing enforcement fee may not be abated.

HOLDINGS

1. Appellant has not established error in respondent’s determination that appellant had a filing requirement and in respondent’s proposed assessment.
2. Appellant has not established reasonable cause to abate the late filing penalty.
3. Appellant has not established reasonable cause to abate the demand penalty.
4. Appellant has not established reasonable cause to abate the per shareholder late filing penalty.
5. Appellant has not established a legal basis to abate the filing enforcement fee.


DISPOSITION

Respondent’s action is modified to reduce the proposed assessment of tax to \$800, the late filing penalty to \$200, the demand penalty to \$200, and the per shareholder late filing penalty to \$216, as conceded by respondent on appeal. Respondent’s action is otherwise sustained.


Signed by:

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 Seth Elsom
 Hearing Officer

We concur:

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 Asaf Kletter
 Administrative Law Judge

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 Sara A. Hosey
 Administrative Law Judge

Date Issued: 12/10/2025