

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

In the Matter of the Appeal of: )  
**MGG ENTERPRISE, INC.** ) OTA Case No. 240917424  
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**OPINION**

Representing the Parties:

For Appellant: Grace Gasinski, CFO

For Respondent: Jeffrey Gates, Attorney

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, MGG Enterprise, Inc. (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$9,529.70, a late-filing penalty of \$2,382.42, a demand to file penalty (Demand penalty) of \$2,382.42, a filing enforcement fee of \$86, and applicable interest for the fiscal taxable year ending June 30, 2021 (TYE 2021).

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<sup>1</sup>**

1. Has appellant established error in FTB’s proposed assessment, as modified on appeal?
2. Has appellant established reasonable cause to abate the late-filing penalty?

**FACTUAL FINDINGS**

1. Appellant is a Nevada corporation with a fiscal year ending on June 30th. Appellant had a single employee who resided in California in TYE 2021.

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<sup>1</sup> In its briefing, FTB agreed to abate the filing enforcement fee and the demand penalty. These are not at issue, and this Opinion does not address them further. On appeal, appellant filed a tax return with FTB that self-assesses a penalty for underpayment of estimated tax of \$25.38. That penalty, therefore, is also not at issue, and this Opinion does not address it further.

2. FTB obtained third-party information indicating that appellant may have received California source income but had not filed a 2021 tax return. On November 29, 2023, FTB issued a Demand for Tax Return (Demand).<sup>2</sup>
3. Appellant did not respond to the Demand, and FTB estimated appellant's income and issued a Notice of Proposed Assessment (NPA). The NPA proposed to assess tax of \$9,529.70, a late-filing penalty of \$2,382.42, a Demand penalty of \$2,382.42, a filing enforcement fee of \$86, plus interest.
4. Appellant protested the NPA on the basis that it was a Nevada corporation that only had one California employee in TYE 2021.
5. On August 16, 2024, FTB issued a Notice of Action affirming the NPA.
6. Appellant filed a timely appeal and indicated it was filing a "protective" California Corporation Franchise or Income Tax Return (Form 100) for TYE 2021.
7. On appeal, upon request by OTA, appellant submitted a copy of the Form 100 filed with FTB for TYE 2021. The Form 100 reported \$0 net income for tax purposes, the \$800 minimum franchise tax, and a \$25.38 penalty for underpayment of estimated tax. The Form 100 did not report any interest or a late-filing penalty.
8. OTA requested that FTB provide additional briefing on whether the filed Form 100 modifies its proposed assessment. FTB responded that it accepted appellant's tax return for TYE 2021, but the reported penalty and interest calculations are incorrect. FTB agreed to reduce the proposed tax from \$9,529.70 to \$800, reduce the late-filing penalty from \$2,382.42 to \$200, abate the demand penalty and the filing enforcement fee, and reduce interest accordingly. FTB also accepted appellant's calculation of the self-assessed penalty of \$25.38 for underpayment of estimated tax.

### DISCUSSION

#### Issue 1: Has appellant established error in FTB's proposed assessment, as modified on appeal?

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

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<sup>2</sup> FTB's information was from 2021. Therefore, FTB issued its Demand and Notice of Proposed Assessment for calendar taxable year 2021, presumably because appellant had not filed a return, so FTB was not aware that appellant's taxable year ends on June 30.

successfully rebutted when the taxpayer fails to provide credible, competent, and relevant evidence as to the issues in dispute. (*Ibid.*)

Appellant does not dispute that it would owe the minimum franchise tax of \$800 as proposed by FTB if appellant were doing business in California. Appellant's sole contention on appeal is that it did not do business in California in TYE 2021. Appellant asserts it did not do business within the meaning of R&TC section 23101(b) because: (1) appellant is a Nevada corporation and is domiciled in Nevada; (2) appellant had no sales in California, (3) appellant owns no real property or tangible personal property in California; and (4) appellant paid just \$12,000 in compensation to its California employee in TYE 2021.

R&TC sections 23153(a) and (b)(3) provide that a corporation "doing business" in California is required to pay the annual minimum franchise tax. For the taxable year at issue, the amount of this tax was \$800. (R&TC, §§ 23153(d)(1).) 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." A taxpayer will be considered to be "doing business" in California if any of the following conditions are satisfied: (1) the taxpayer is organized or commercially domiciled in California; (2) sales of the taxpayer in California exceed the lesser of \$500,000 or 25 percent of the taxpayer's total sales; (3) the real property and tangible personal property of the taxpayer in California exceed the lesser of \$50,000 or 25 percent of the taxpayer's total real property and tangible property; or (4) the amount paid in California by the taxpayer for compensation exceeds the lesser of \$50,000 or 25 percent of the total compensation paid by the taxpayer.<sup>3</sup> (R&TC, § 23101(b).) When the Legislature added subdivision (b) to R&TC section 23101, it intended to provide minimum levels of nexus to the State of California rather than to revise subdivision (a) or to set safe harbor rules. (*Appeal of GEF Operating, Inc., supra.*)

Accepting as true appellant's contentions that it does not meet the thresholds provided in R&TC section 23101(b), OTA must still determine whether appellant's utilization of a California employee constitutes "doing business" pursuant to the definition in R&TC section 23101(a). In other words, was appellant "actively engaging in any transaction for the purpose of financial or pecuniary gain or profit" in this state?

Here, it is undisputed that appellant employed a California employee during TYE 2021. Corporations engaging in even a single profit-motivated transaction in the state during the taxable year may be held to be "doing business" in California. (*Carson Estate Co. v.*

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<sup>3</sup> The amounts in R&TC section 23101(b) are adjusted annually for inflation. For example, the amount for payroll for the taxable year at issue was \$63,726.

*McColgan* (1943) 21 Cal.2d 516 [a couple of stock transactions constitute doing business]; *Appeal of Cagan Homes, Inc.* (65-SBE-044) 1965 WL 1381 [even a single transaction may constitute doing business].)

OTA finds the fact that appellant paid wages to a California employee during TYE 2021 is sufficient to find that appellant was engaged in business in this state for the purposes of R&TC section 23101(a.) Hiring an employee is a profit-motivated transaction as it contributed to appellant's business, and appellant has not provided evidence to show that the employee was hired for any reason other than to further appellant's business. Therefore, FTB properly determined that appellant was subject to the \$800 minimum franchise tax, and appellant has failed to carry its burden of showing it was not doing business in California.

Moreover, if appellant receives any benefit from California, it may be taxed in exchange for the provision of that benefit. (*Appeal of Knoll Pharmaceutical Co, Inc.* (77-SBE-084) 1977 WL 3894.) It is not necessary that there is a regular course of business or transactions to establish that a taxpayer is doing business in California. (*Ibid.*) Here, appellant utilized the services of an employee who resided in California, which benefited appellant, which was engaged in a for-profit business. Appellant has not established that it did not benefit from the services provided by its California employee. Thus, appellant was doing business in California in TYE 2021 and is subject to California tax.

Issue 2: Has appellant established reasonable cause to abate the late-filing penalty?

California imposes a penalty for failing to file a return on or before the due date, unless the taxpayer shows that the failure is due to reasonable cause and not due to willful neglect. (R&TC, § 19131.) When FTB imposes a penalty, it is presumed to have been imposed correctly. (*Appeal of Mauritzson*, 2021-OTA-198P.) A taxpayer may rebut this presumption by providing credible and competent evidence supporting abatement of the penalty for reasonable cause. (*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 acted under similar circumstances. (*Ibid.*)

Appellant makes no specific arguments with respect to the late filing of its tax return other than to reiterate that appellant does not believe it has a California filing requirement because it is not doing business in California. As discussed above, appellant was doing business in California, owed the California minimum tax of \$800, and, as a result, had a California filing requirement for TYE 2021. (R&TC, §§ 23101(a), 25153(a), (b)(3), (d)(1).

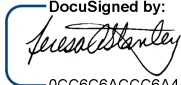
Appellant filed its tax return late on August 23, 2024. Therefore, FTB properly imposed the \$200 late-filing penalty, which may not be abated as appellant has not established reasonable cause to do so.

HOLDINGS

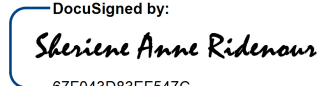
1. Appellant has not established error in FTB’s proposed assessment, as modified on appeal.
2. Appellant has not established reasonable cause to abate the late-filing penalty as reduced on appeal.


DISPOSITION

OTA sustains FTB’s action for the TYE 2021, as modified on appeal.<sup>4</sup>

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 Teresa A. Stanley  
 Administrative Law Judge

We concur:

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 Sheriene Anne Ridenour  
 Administrative Law Judge

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 Michael F. Geary  
 Administrative Law Judge

Date Issued: 12/23/2025

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<sup>4</sup> TYE 2021 refers to appellant’s fiscal year ending June 30, 2021, rather than the 2021 calendar year reflected in FTB’s NPA and Notice of Action.