

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
**OUTDOOR PROLINK LLC** ) OTA Case No. 240616421  
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**OPINION**

Representing the Parties:

For Appellant: Deborah Croarkin, CPA

For Respondent: Christopher T. Tuttle, Attorney

For Office of Tax Appeals: Tom Hudson, Attorney

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Outdoor Prolink LLC (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing an Limited Liability Company (LLC) annual tax of \$800, an LLC fee of \$6,000, a late-filing penalty of \$1,500, a per-member late-filing penalty of \$432, a notice and demand (demand) penalty of \$1,700, and a filing enforcement fee of \$108 and applicable interest 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 is required to pay the LLC annual tax.
2. Whether appellant is required to pay the LLC fee.
3. Whether appellant has established reasonable cause for its failure to file a timely return.
4. Whether appellant has established reasonable cause to abate the per-member late-filing penalty.
5. Whether appellant has established reasonable cause to abate the demand penalty.

6. Whether appellant has established that FTB did not properly impose the filing enforcement fee.
7. Whether interest may be abated.

#### FACTUAL FINDINGS

1. As of the date briefing closed, appellant did not file a California income tax return for the 2019 tax year. However, appellant filed sales and use tax returns with the California Department of Tax and Fee Administration (CDTFA) reporting California sales of \$1,016,459, including: \$321,503 for the third quarter of 2019 (3Q19); and \$694,956 for 4Q19.
2. On March 1, 2023, FTB issued a Demand for Tax Return (demand) to appellant stating that appellant had a filing requirement based on the total sales that appellant reported to CDTFA. The demand required appellant to file a return or explain why it did not have a filing requirement.
3. In response, appellant filed a Nonqualified Business Entity Questionnaire (questionnaire) asserting that it did not have a filing requirement. In the questionnaire, appellant explained that it was an “E-commerce business located in Colorado but selling retail goods online and some customers reside in California.” Appellant denied having property, employees, or members/officers in California.
4. By letter dated April 9, 2023, FTB stated that it had reviewed the questionnaire and determined that appellant was “doing business” in California. Additionally, FTB’s letter explained that under federal Public Law 86-272 appellant was exempt from California taxes that are on, or measured by, net income. However, FTB explained to appellant that it must file a return and pay the LLC annual tax, which is not measured by net income. FTB also notified appellant that it may impose a demand penalty if appellant failed to file a return by the due date of May 15, 2023.
5. FTB did not receive a return or response from appellant by the due date. Therefore, on January 16, 2024, FTB issued a Notice of Proposed Assessment (NPA) to appellant. The NPA treated appellant as a partnership,<sup>1</sup> proposing to assess an LLC annual tax of \$800, an LLC fee of \$6,000, a late-filing penalty of \$1,500, a per-member late-filing

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<sup>1</sup> On appeal, appellant has not provided any argument or evidence to show that it is taxable as a corporation for federal purposes and would therefore be required to file a California Corporation Franchise or Income Tax Return (Form 100).

- penalty of \$432, a demand penalty of \$1,700, a filing enforcement cost recovery fee of \$108, and applicable interest.
6. Appellant timely protested the NPA. FTB explained that it considered appellant's protest, but determined that appellant had a filing requirement for the 2019 tax year. FTB stated that if appellant filed its tax return within 30 days, it would withdraw its NPA and recalculate any penalties and interest. Appellant did not respond. FTB subsequently issued a May 22, 2024 Notice of Action affirming the NPA.
  7. This timely appeal followed.

### DISCUSSION

#### Issue 1: Whether appellant is required to pay the LLC annual tax.

FTB's determination is presumed to be correct and the taxpayer has the burden of proving otherwise. (*Appeal of Wright Capital Holdings, LLC*, 2019-OTA-219P.) Unsupported assertions are not sufficient to satisfy that burden of proof. (*Ibid.*) To successfully rebut FTB's determinations, the taxpayer must provide credible, competent, and relevant evidence as to the issues in dispute. (*Ibid.*)

R&TC section 17941 provides that every LLC must pay the LLC annual tax of \$800 for the privilege of "doing business" in California, as defined in R&TC section 23101. (R&TC, §§ 17941(a), 23153(d).) "Doing business" is defined as "actively engaging in any transaction for the purpose of financial or pecuniary gain or profit." (R&TC, § 23101(a), *Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) A taxpayer is also "doing business" in California if any of the following conditions are satisfied: (1) the taxpayer is organized or commercially domiciled in California; (2) the taxpayer's sales in California exceed the lesser of \$500,000 or 25 percent of the taxpayer's total sales; (3) the taxpayer's real property and tangible personal property in California exceed the lesser of \$50,000 or 25 percent of the taxpayer's total real property and tangible personal 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. (R&TC, § 23101(b).)<sup>2</sup> The taxpayer's pro rata shares of payroll, property and sales from partnerships and pass-through entities must be included in the determination. (R&TC, § 23101(d).)

On appeal, there is no dispute that appellant filed sales and use tax returns with CDTFA reporting tangible personal property sales of \$1,016,459 for the 2019 tax year. Because

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<sup>2</sup> These dollar threshold amounts are adjusted for inflation each year. (R&TC, § 23101(c)(1).)

appellant's sales exceed the \$500,000 threshold set by R&TC section 23101(b)(2), OTA finds that appellant was "doing business" in California during the 2019 tax year. (See R&TC § 23101(b)(2).) However, appellant asserts that its activities are not subject to tax because they are protected by Public Law 86-272 (15 U.S.C. § 381 et seq).<sup>3</sup>

Subsection (a) of Public Law 86-272 provides in relevant part:

No State . . . shall have power to impose . . . a net income tax on the income derived within such State by any person from interstate commerce if the only business activities within such State by or on behalf of such person during such taxable year are either, or both, of the following:

- (1) the solicitation or orders by such person, or [their] representative, in such State for sales of tangible personal property, which orders are sent outside the State for approval or rejection, and, if approved, are filled by shipment or delivery from a point outside of the State; and
- (2) the solicitation of orders by such person, or [their] representative, in such State in the name of or for the benefit of a prospective customer of such person, if orders by such customer to such person to enable such customer to fill orders resulting from such solicitation are orders described in paragraph (1).

(15 U.S.C., § 381(a).)

For purposes of PL 86-272, the term "net income tax" means any tax imposed on, or measured by, net income. (15 U.S.C., § 383.)

In short, PL 86-272 "prohibits a State from taxing the income of a corporation whose only business activities within the State consist of 'solicitation of orders' for tangible goods, provided that the orders are sent outside the State for approval and the goods are delivered from out of state." (*Wisconsin Dept. of Revenue v. William Wrigley, Jr., Co.* (1992) 505 U.S. 214, 216.)

However, this federal law does not apply to the LLC annual tax imposed under R&TC section 17941 because it is not a "net income tax" as that term is used in Public Law 86-272. (See 15 U.S.C., § 383; *Home Impressions, Inc. v. Director, Div. of Taxation*, 21 N.J. Tax 448 [PL 86-272 does not apply to minimum flat tax].) The amount of the LLC annual tax is not measured by income, and an LLC with no net income at all, such as a business that lost money

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<sup>3</sup> Appellant also asserts that it made an error when filing a California Corporation Franchise or Income Tax Return (Form 100). However, nothing in the record shows that appellant filed a Form 100 for the 2019 tax year.

on its sales in this state, would be subject to the same annual LLC tax of \$800 as if it was defined to be “doing business” in California.

Thus, because appellant made sales sufficient to be considered “doing business” in California, appellant was required to file a return and pay the LLC annual tax for the 2019 tax year. Appellant has not met its burden of proving that the FTB’s determination was incorrect. OTA therefore has no basis to overturn the proposed assessment for the LLC annual tax of \$800.

Issue 2: Whether appellant is required to pay the LLC Fee.

Every LLC subject to tax under R&TC section 17941 shall also pay an annual LLC fee. (R&TC, § 17942(a).) The LLC fee is based on the “total income from all sources derived from or attributable to this state,” which here means an LLC’s gross income plus cost of goods sold that are paid or incurred in connection with the trade or business of the taxpayer. (R&TC, § 17942(b)(1)(A).) However, “total income from all sources derived from or attributable to this state” shall not include allocation or attribution of income or gain or distributions made to an LLC in its capacity as a member of, or holder of an economic interest in, another LLC if the allocation or attribution of income or gain or distributions are directly or indirectly attributable to income that is the subject to the payment of the LLC fee. (*Ibid.*) The LLC fee is due and payable on the date the return is required to be filed under R&TC section 18633.5. (R&TC, §.17942(c); see also *Appeal of Summit Hosting LLC* 2021-OTA-216P.) As relevant here, if the LLC’s total income from all sources derived from or attributable to this state during the tax year is \$1,000,000 or more, but less than \$5,000,000, the amount of the LLC fee is \$6,000. (R&TC, § 17942(a)(3).)

Here, appellant was doing business in California during the 2019 tax year and is subject to the LLC annual tax. Therefore, appellant is also subject to the LLC Fee. (See R&TC, § 17942(a).) To calculate the LLC Fee, FTB obtained appellant’s California sales and use tax returns, which report that appellant made sales in California of \$1,016,459 for the 2019 tax year. Therefore, FTB imposed an LLC fee of \$6,000 in accordance with R&TC section 17942(a)(3). Appellant provides no evidence or argument that FTB’s calculation of the LLC fee is incorrect. Moreover, because appellant is subject to the annual LLC tax imposed by R&TC section 17941, and every LLC that is subject to tax under that section must also pay the LLC fee imposed under R&TC section 19742, there is no basis to overturn FTB’s proposed assessment.

Issue 3: Whether appellant has established reasonable cause to abate the late-filing penalty.

Every LLC classified as a partnership for California tax purposes that is doing business in California, organized in California, or registered with the California Secretary of State shall file its return on or before the 15th day of the third month following the close of its taxable year. (R&TC, § 18633.5(a).) FTB postponed the deadline to July 15, 2020, for all LLCs to file their 2019 tax returns.<sup>4</sup>

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.<sup>5</sup> 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 acted in the same way under similar circumstances. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) Even if a taxpayer is unaware of the California filing requirement, ignorance of the law is not an excuse for failing to file a timely return. (*Appeal of GEF Operating, Inc.*, *supra.*)

As discussed above, appellant was doing business in California during the 2019 tax year but as of the date briefing closed, did not file a return. Thus, FTB properly imposed the late-filing penalty. The late filing penalty was properly imposed because appellant had a filing requirement for TYE 2019 but failed to file a return at any time. There is no evidence that appellant had a reasonable cause for not filing a return for TYE 2019. Appellant has not offered any specific arguments or explanations concerning a possible reasonable cause for its failure to file a return. Because appellant never filed a return, the maximum late-filing penalty of 25 percent was properly imposed (i.e., 25 percent of \$6,000 equals \$1,500). OTA has no evidentiary basis to abate the late-filing penalty.

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<sup>4</sup> See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2020-3-state-postpones-tax-deadlines-until-july-15-due-to-the-covid-19-pandemic.html>.

<sup>5</sup> FTB has not asserted, and the evidence does not show, willful neglect, so the only issue is whether appellant has demonstrated reasonable cause for failing to timely file a return for the 2019 tax year.

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

R&TC section 19172 imposes a per-partner (or per-member) late-filing penalty when a partnership or an LLC classified as a partnership fails to file a return at the time prescribed (determined with regard to any extension of time for filing) unless it is shown that the failure was due to reasonable cause. The amount of the penalty under R&TC section 19172 is computed by multiplying \$18 by the number of partners (or LLC members) and by the number of months, or fraction thereof, that the return is late (not to exceed 12 months). (R&TC, § 19172(a)(2), (b).)

Here, the per-member late-filing penalty was properly imposed because appellant had a filing requirement for TYE 2019 but failed to file a return at any time. FTB calculated the penalty of \$432 based on its default assumption that there were two LLC members for the maximum amount of 12 months (\$18 x 2 members x 12 months). Appellant has not shown that the per-member late-filing penalty was improperly calculated. Appellant has not offered any evidence to show reasonable cause for the failure to timely file a return. Therefore, OTA has no legal grounds to abate the per-member late-filing penalty.

Issue 5: Whether appellant has established reasonable cause to abate the demand penalty.

R&TC section 19133 provides that, if a taxpayer fails or refuses to furnish any information requested in writing by FTB or fails or refuses to file a tax return after a demand from FTB, then FTB may impose a penalty of 25 percent of the amount of tax for which the information or request was required, unless it is shown that the failure was due to reasonable cause and not due to willful neglect.

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 FTB's letter dated April 9, 2023, required appellant to file a return and notified appellant that the demand penalty would be imposed if appellant did not timely file a tax return. FTB did not receive a return from appellant (or any other response) by the May 15, 2023 due date. As such, FTB properly imposed the demand penalty. Appellant has not provided any argument or evidence to establish reasonable cause for its failure to file a return by the deadline. Accordingly, OTA finds no basis to relieve the demand penalty.

Issue 6: Whether the filing enforcement cost recovery fee was properly imposed.

R&TC section 19254 requires the imposition of the filing enforcement cost recovery fee when a taxpayer fails to file a return within 25 days after FTB mails to the taxpayer a formal legal demand to file the return. The amount of the fee is specified in the annual Budget Act. (R&TC, § 19254(a)(2)(b).) Once the fee is properly imposed, the statute provides no grounds, including reasonable cause, for abating the fee. (R&TC, § 19254; see *Appeal of Shanahan*, 2024-OTA-039P.) Therefore, OTA's inquiry is limited to whether FTB complied with the statutory notice requirements for imposing this fee.

Here, FTB informed appellant in its April 9, 2023 letter that appellant would be subject to the filing enforcement cost recovery fee if appellant did not file a return for the 2019 tax year by May 15, 2023. As discussed above, appellant had a filing requirement but did not file a return by the deadline. Therefore, FTB properly imposed the filing enforcement cost recovery fee and there is no basis to abate it.

Issue 7: Whether interest may be abated.

In accordance with R&TC section 19101, interest must be assessed from the date a tax payment is due through the date that it is paid. The same is also generally true for interest on penalties if they are not paid within 15 days of the notice and demand. (R&TC, § 19101(c)(2).) The imposition of interest is mandatory; it is not a penalty but is compensation for appellant's use of money after it should have been paid to the state. (*Appeal of Moy*, 2019-OTA-057P.) There is no reasonable cause exception to the imposition of interest. (*Ibid.*) To obtain interest relief, appellants must qualify under R&TC section 19104 (pertaining to an unreasonable error or delay by FTB in the performance of a ministerial or managerial act), R&TC section 19112 (pertaining to extreme financial hardship caused by significant disability or other catastrophic circumstance),<sup>6</sup> or R&TC section 21012 (pertaining to reasonable reliance on FTB's written advice).

Appellant does not allege, and the record does not show, that any of these interest waiver provisions might be applicable here. Therefore, OTA finds no grounds for interest abatement.

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<sup>6</sup> OTA does not have the legal authority to review or overturn FTB's denial of interest abatement based on extreme financial hardship. (*Appeal of Moy, supra.*)

HOLDINGS

1. Appellant is required to pay the annual LLC tax.
2. Appellant is required to pay the LLC fee.
3. Appellant has not established reasonable cause for its failure to file a timely return.
4. Appellant has not established reasonable cause to abate the per-member late-filing penalty.
5. Appellant has not established reasonable cause to abate the demand penalty.
6. The filing enforcement cost recovery fee was properly imposed.
7. Interest may not be abated.

DISPOSITION

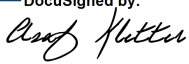
FTB's action is sustained.

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Keith T. Long  
 Administrative Law Judge

We concur:

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Asaf Kletter  
 Administrative Law Judge

Signed by:  
  
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Josh Lambert  
 Administrative Law Judge

Date Issued: 12/18/2025