

report Siarhei Nazarau (S. Nazarau) as appellant's initial officer and/or director.

Appellant's sole shareholder and President is S. Nazarau.

2. FTB received information indicating that appellant filed its 2020 U.S. federal S corporation tax return using a California address; however, appellant did not file a California tax return for that year.
3. FTB issued appellant a Demand for Tax Return (demand) for the 2020 tax year and requested a response by April 19, 2023. The demand informed appellant that a late filing penalty, demand penalty, filing enforcement fee, and applicable interest may be assessed if FTB did not receive a timely response.
4. FTB issued appellant a Notice of Proposed Assessment (NPA) after appellant failed to respond to the demand. The NPA proposed tax of \$10,480, a late filing penalty of \$2,620, a demand penalty of \$2,620, a filing enforcement fee of \$86, and applicable interest.
5. S. Nazarau called FTB and stated that appellant is a Florida S corporation business entity. S. Nazarau also stated that he resides in California and holds a California driver's license to operate trucking vehicles for freight. FTB informed S. Nazarau that appellant needs to file a California tax return and is subject to the California \$800 annual minimum franchise tax.
6. Appellant protested the NPA and provided its certificate of status as a Florida corporation from the Florida Department of State.
7. FTB considered appellant's protest but rejected it by issuing a Notice of Action affirming the NPA.
8. Appellant timely appealed.
9. On appeal, FTB revises the proposed additional tax to \$800, the late filing penalty to \$200, and the demand penalty to \$200.

DISCUSSION

Issue 1: Whether appellant was doing business in California and, therefore, subject to the annual minimum franchise tax.

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.*) R&TC section 23153(b)(3) provides that every corporation "doing business" in California is subject to the annual minimum franchise tax. (See R&TC, § 23802(c) [S corporations are subject to the annual minimum franchise tax].)

For the 2020 tax year, the amount of the minimum franchise tax was \$800. (R&TC, § 23153(d)(1).) For taxable years beginning on or after January 1, 2011, R&TC section 23101(a) and (b) establish two independent ways in which a taxpayer is considered “doing business” in California. (See *Appeal of Aroya Investment I, LLC*, 2020-OTA-255P.) Here, FTB bases its proposed assessment on R&TC section 23101(a), which provides that a taxpayer is doing business in California if it is “actively engaging in any transaction for the purpose of financial or pecuniary gain or profit.”¹

Managerial functions performed by a taxpayer in California are sufficient to constitute “doing business” in the state. (*Appeal of Reno Liquor Company, Inc.* (59-SBE-004) 1959 WL 1294.) Corporations not organized in California that have employees in the state engaged in providing personal services are engaged in business in this State and are subject to the franchise tax even though those corporations have no office or regular place of business in this state. (See *Appeal of Knoll Pharmaceutical Co., Inc.* (77-SBE-084) 1977 WL 3894.)

FTB does not dispute appellant’s singular contention that it is incorporated in Florida, and not in California. However, FTB asserts that S. Nazarau was a resident of California for at least part of the 2020 tax year and, during that time, performed managerial functions for appellant as the President and sole shareholder of appellant. Therefore, FTB concludes appellant was “doing business” in California. In support of its position, FTB provides a printout from the California Department of Motor Vehicles listing S. Nazarau’s California address as of August 13, 2020, as well as the issuance of a California commercial driver’s license in 2020. Additionally, FTB submits public record evidence that appellant reported a California mailing address to the Florida Department of State as of August 13, 2020, and, from 2021 to 2023, as appellant’s principal place of business. FTB also provides a copy of appellant’s 2020 IRS Tax Return Transcript indicating appellant reported a California address on its federal tax return.

Appellant does not dispute FTB’s assertion that its President and sole shareholder, S. Nazarau, became a California resident in or around August 2020 and had since conducted business activity from within the state through S. Nazarau. Rather, appellant’s sole argument is that it is incorporated in Florida. However, without further evidence or arguments to the contrary, the record supports the conclusion that appellant’s President and sole shareholder performed managerial functions in California during the 2020 tax year, which, when attributed to appellant, constitutes “doing business” within the state. (See *Appeal of Reno Liquor Company*,

¹ A taxpayer is also considered doing business in California if it satisfies certain bright-line nexus conditions or thresholds found in R&TC section 23101(b)(1) through (4). FTB does not assert, and the record does not show, that this nexus test is satisfied here.

Inc., supra.) FTB's imposition of the \$800 minimum franchise tax is therefore proper. Accordingly, appellant fails to meet its burden of proving error in FTB's determination.

Issue 2: Whether appellant has established a basis to abate the late filing penalty.

R&TC section 19131 imposes a late filing penalty 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 not willful neglect. (R&TC, § 19131(a).) To establish reasonable cause, a taxpayer must show that the failure to file a timely return occurred despite the exercise of ordinary business care and prudence, or that cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of GEF Operating, Inc., supra.*) The burden is on the taxpayer to show that reasonable cause exists to support an abatement of the late filing penalty. (*Appeal of Xie, 2018-OTA-076P.*)

As determined above, appellant was "doing business" in California during the 2020 tax year, and appellant did not file (and still has not filed) a 2020 tax return. Appellant's sole contention is that it is incorporated in Florida, not California. However, the record does not show that appellant took steps to determine whether it had a California filing obligation, including reasonably relying on the substantive tax advice of a tax professional. (See *Appeal of Summit Hosting LLC, 2021-OTA-216P.*) Appellant therefore has not established that its failure to timely file a return occurred despite the exercise of ordinary business care and prudence. Accordingly, appellant has not established a basis to abate the late filing penalty.

Issue 3: Whether appellant has established a basis to abate the demand penalty.

R&TC section 19133 imposes a penalty for the failure to file a return or to provide information upon the FTB's demand to do so, unless reasonable cause prevented the taxpayer from responding to the demand. The burden of proving reasonable cause for the failure to file upon demand is on the taxpayer. (*Appeal of GEF Operating, Inc., supra.*) Here, FTB issued appellant a demand and noted that appellant may be subject to the demand penalty if appellant did not respond timely. Appellant failed to respond to the demand and its singular argument that it is incorporated in Florida does not establish reasonable cause to abate the demand penalty.

Issue 4: Whether the filing enforcement fee may be abated.

R&TC section 19254(a)(2) provides that, if FTB mails a formal legal demand for a tax return to a taxpayer, a filing enforcement fee is required to be imposed when the taxpayer fails or refuses to file the return within the prescribed time period. Once properly imposed, the

statute provides no grounds upon which the fee may be abated. (R&TC, § 19254; *Appeal of GEF Operating, Inc., supra.*) Here, FTB sent appellant a demand that advised appellant that a filing enforcement fee would be imposed if appellant did not timely respond by April 19, 2023. Appellant, however, did not respond. Therefore, FTB properly imposed the filing enforcement fee, and there is no basis to abate the fee.

Issue 5: Whether appellant has established a basis to abate interest.

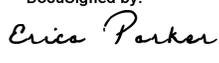
If any amount is not paid by the due date, interest is required to be imposed from the due date until the date the taxes are paid. (R&TC, § 19101(a).) To obtain relief from interest, a taxpayer must qualify under the waiver provisions of R&TC section 19104 (pertaining to unreasonable error or delay by FTB in the performance of a ministerial or managerial act) or section 21012 (pertaining to reasonable reliance on the written advice of FTB). Appellant does not allege, and the record does not reflect, that any of the above waiver provisions are applicable here. Therefore, appellant has not established a basis to abate interest.

HOLDINGS

1. Appellant was doing business in California and, therefore, is subject to the annual minimum franchise tax.
2. Appellant has not established a basis to abate the late filing penalty.
3. Appellant has not established a basis to abate the demand penalty.
4. The filing enforcement fee may not be abated.
5. Appellant has not established a basis to abate interest.

DISPOSITION

FTB’s action is modified pursuant to FTB’s concession to revise the proposed additional tax to \$800, the late filing penalty to \$200, and the demand penalty to \$200, plus applicable interest; in all other respects, FTB’s action is sustained.

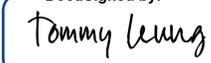
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 Erica Parker
 Hearing Officer

We concur:
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 Keith T. Long
 Administrative Law Judge

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 Tommy Leung
 Administrative Law Judge

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