

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
NEUROLOGY ASSOCIATES ONCALL LLC) OTA Case No. 241118045
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OPINION

Representing the Parties:

For Appellant: Remus A. Haste, CPA

For Respondent: Amelia Breen, Attorney

E. PARKER, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Neurology Associates Oncall LLC (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing to assess tax of \$7,145.20, a late filing penalty of \$1,786.30, a notice and demand (demand) penalty of \$1,786.30, a filing enforcement cost recovery fee (filing enforcement fee) of \$86, and applicable interest for the 2021 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).

ISSUE¹

Whether appellant has demonstrated error in FTB’s determination that it has a filing requirement or in FTB’s proposed assessment.

FACTUAL FINDINGS

1. Appellant is a limited liability company that elected to be taxed as an S corporation for federal income tax purposes. Appellant’s sole shareholder is C. Brignoni, MD.
2. Appellant did not file a 2021 California S Corporation Franchise or Income Tax Return (Form 100S).

¹ Appellant does not provide arguments specific to the proposed penalties, fee, or interest, and therefore they will not be discussed further.

3. FTB received information that appellant filed a 2021 federal tax return using a California address.
4. FTB issued appellant a Demand for Tax Return (First Demand). Appellant timely responded to the First Demand, stating that: (1) appellant conducted no activities in California for the 2021 tax year; (2) a 2021 Form 1099 was incorrectly issued to appellant for \$80,827.50; and (3) the \$80,827.50 was reported as income on the tax return of another California entity, identified as CBMD. Appellant also provided a completed Nonqualified Business Entity Questionnaire (FTB 4694). On FTB 4694, appellant indicated that a California member, shareholder, officer, partner, or representative signed checks for appellant.
5. With its response to the First Demand, appellant also included the first page of its 2021 U.S. Income Tax Return for an S Corporation (Form 1120-S) for the short period beginning August 27, 2021, and ending December 31, 2021, which reported a California address. On Form 1120-S, appellant reported total income of \$80,828 and a corresponding deduction of \$80,828, resulting in zero ordinary business income. On the line reporting the deduction of \$80,828, appellant provided the employer identification number of CBMD, the California entity that purportedly earned, reported, and paid income tax (if any) on the \$80,828.
6. FTB sent appellant a Determination – Demand for Tax Return letter (Second Demand) stating that, based on the available information, appellant performed business functions in California and was “doing business” in California under R&TC section 23101. Therefore, under R&TC sections 23151 and 18601, appellant had a filing requirement and must file a California business entity income tax return for the 2021 tax year. The Second Demand required appellant, within 30 days, to file a valid tax return, or else FTB would assess tax based on available information, plus a late filing penalty, a demand penalty, a filing enforcement fee, and applicable interest. Appellant did not respond to the Second Demand.
7. FTB sent appellant a Notice of Proposed Assessment (NPA) for the 2021 tax year that estimated appellant’s income to be \$80,828, which was the total income appellant reported on its 2021 Form 1120-S. FTB computed the proposed tax using a tax rate of 8.84 percent (i.e., the tax rate for a C corporation), and imposed the late filing penalty, the demand penalty, and the filing enforcement fee, plus interest.
8. Appellant filed a timely protest of the NPA.

9. During protest, FTB requested that appellant provide: (1) a copy of the contract between appellant and the payor on the 2021 Form 1099 that reported the income at issue in this appeal; and (2) a copy of appellant's 2021 federal tax return. It appears appellant did not provide the requested information.
10. FTB issued a Notice of Action affirming the NPA and this timely appeal followed.
11. On appeal, appellant provides copies of nine checks issued to C. Brignoni, MD, from the 2021 Form 1099 third party payor (CompHealth) totaling \$280,725.12. Appellant also provides the first page of CBMD APC's Form 1120-S, highlighting gross receipts reported of \$1,529,324, with a note indicating that the \$80,828 at issue in this appeal is included in the reported total.
12. On appeal, FTB concedes that the applicable S corporation tax rate is 1.5 percent, not 8.84 percent as applied in the NPA. FTB provides a revised computation of the proposed assessment based on the 1.5 percent tax rate, and recomputed penalties, fee, and interest. Based on FTB's revised computation, the proposed tax is \$1,212.42, plus a late filing penalty of \$303.11, a demand penalty of \$303.11, a filing enforcement fee of \$86, and applicable interest.

DISCUSSION

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

Generally, S corporations "doing business" within California shall annually pay to the state, for the privilege of exercising its corporate franchises within this state, a tax according to or measured by 1.5 percent of its net income or, if greater, the minimum franchise tax of \$800. (R&TC, §§ 23802(b)(1), (c), 23151(a), (d)(1), 23153.) "Doing business" is defined as "actively

engaging in any transaction for the purpose of financial or pecuniary gain or profit.” (R&TC, § 23101(a).)²

Here, FTB received information that appellant performed business functions in California; for example, appellant’s shareholder signed checks for appellant in California. Moreover, appellant provided information showing that CompHealth paid appellant \$80,828, which appellant reported as income on its 2021 Form 1120-S. Appellant also reported a California address on its 2021 Form 1120-S. Based on this information, OTA agrees with FTB’s determination that appellant has a filing requirement because it was doing business in this state for the 2021 tax year, and therefore, is subject to a tax on its net income, or if greater, the minimum franchise tax. (See R&TC, §§ 23802(b)(1), (c), 23153(d)(1).)

If a taxpayer fails to file a return, then FTB, at any time, “may make an estimate of the net income, from any available information, and may propose to assess the amount of tax, interest and penalties due.” (R&TC, § 19087(a).) When FTB proposes a tax assessment based on an estimate of income, FTB’s initial burden is to show that its proposed assessment is reasonable and rational. (*Appeal of Shanahan*, 2024-OTA-039P.)

Because appellant did not file a Form 100S in response to the Second Demand, FTB estimated appellant’s total income to be \$80,828, proposed tax on the estimated total income, and imposed penalties, a fee, and interest. FTB’s estimate was based on the amount of income reported by appellant on its Form 1120-S, which is the same amount on the Form 1099 issued to appellant. OTA finds that FTB’s proposed assessment is reasonable and rational.

Appellant argues the 2021 Form 1099 was issued to appellant in error and that it did not receive the reported income during the 2021 tax year. Appellant contends that C. Brignoni MD has two companies on file with CompHealth (appellant and CBMD, APC); however, appellant was inactive for the 2021 tax year. Appellant provides copies of nine checks issued by CompHealth to C. Brignoni MD in 2021, totaling \$280,725.12. Appellant claims the \$80,828 reported as paid to appellant on 2021 Form 1099 is included in the nine checks, the sum of which was reported as income on CBMD APC’s 2021 Form 1120-S. Additionally, appellant

² For taxable years beginning on or after January 1, 2011, 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) 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 exceeds 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 taxpayer’s total compensation paid by the taxpayer. (R&TC, § 23101(b)(1)-(4).) The \$50,000 and \$500,000 threshold amounts are adjusted annually for inflation. (R&TC, § 23101(c).) For the 2021 tax year, the amounts were \$637,252, and \$63,726, respectively. (See www.ftb.ca.gov/file/business/doing-business-in-california.html.)

asserts that it provided its information to CompHealth only as part of the process to set up an account to be paid for services performed in the following year, not for services performed in the 2021 tax year.

The record in this appeal does not support appellant's assertions that appellant was inactive and did not receive the income reported on the Form 1099 in 2021. For example, appellant completed a questionnaire indicating that appellant's shareholder signed checks for appellant in California during the 2021 tax year. Additionally, while appellant provides copies of checks issued to C. Brignoni MD by CompHealth, there is no evidence that those checks include the \$80,828 reported as paid to appellant.³ There is also no evidence that appellant objected to CompHealth's reporting of income at the time the Form 1099 was issued; rather, the record shows that appellant reported the income for federal purposes. On its Form 1120-S, appellant also reported that it was incorporated on August 27, 2021, and used a California address. Appellant has not provided credible, competent, and relevant evidence to show that FTB erred in determining that appellant had California income subject to tax; therefore, FTB's determination must be upheld. (See *GEF Operating, Inc.*, *supra*.)

³ OTA is unable to reconcile any combination of the provided nine checks that would equal the total of \$80,828 which was reported as paid to appellant.

HOLDING

Appellant has not demonstrated error in FTB’s determination that it has a filing requirement or in FTB’s proposed assessment.

DISPOSITION

FTB’s action is modified, as conceded by FTB, to apply a tax rate of 1.5 percent and revise the penalties, fee, and interest accordingly. FTB’s action is otherwise sustained.

DocuSigned by:
Erica Parker
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Erica Parker
Hearing Officer

We concur:
DocuSigned by:
Asaf Kletter
D17AEDDCAAB045B...
Asaf Kletter
Administrative Law Judge

DocuSigned by:
Keith T. Long
DC88A60D8C3E442...
Keith T. Long
Administrative Law Judge

Date Issued: 3/11/2026