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OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **MCDONELL LANE, INC.**	)	OTA Case No. 240115255

OPINION

Representing the Parties:

For Appellant: Richard Shamberg, President

For Respondent: Christopher T. Tuttle, Attorney
Jacqueline Zumaeta, Deputy Chief Counsel

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, McDonell Lane, Inc. (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing an assessment of tax of $800, a late filing penalty of $200, a notice and demand (demand) penalty of $200, a filing enforcement cost recovery fee of $86, and interest, for the 2020 tax year.

Office of Tax Appeals (OTA) Panel Members Josh Lambert, Steven Kim, and Kenneth Gast held an oral hearing for this matter in Cerritos, California, on March 12, 2025. At the conclusion of the hearing, the record was closed, and this matter was submitted on the oral hearing record pursuant to California Code of Regulations, title 18, section 30209(b).

ISSUES

1. Whether appellant was doing business in California for the 2020 tax year.
2. Whether appellant established a basis to abate the late filing penalty.
3. Whether appellant established a basis to abate the demand penalty.
4. Whether the filing enforcement cost recovery fee is abated.
5. Whether interest is abated.

FACTUAL FINDINGS

Appellant's Background

1. Appellant is taxed as an S corporation for federal and California income tax purposes and was incorporated in Alaska in 2003.
2. R. Shamberg and J. Shamberg (the Shambergs) are Directors of appellant, and R. Shamberg is President of appellant. M. Shier was Director, Vice President, and Treasurer of appellant.[1] As discussed below, M. Shier passed away in late 2020.
3. Appellant owned and rented real property located in Alaska (Alaska Property) that it acquired in 2003. The Alaska Property was the only property that appellant owned, and its acquisition and rental was the original purpose of its corporate formation.[2]
4. Appellant is registered with the Alaska Department of Commerce, Community, and Economic Development - Division of Corporations, Business and Professional Licensing (Alaska Department of Commerce). Appellant was not registered with the California Secretary of State (California SOS).
5. Appellant has no operating agreement. Decisions on any actions to be taken by appellant, including whether to issue distributions, were based on mutual agreement between the Shambergs and M. Shier.
6. Prior to M. Shier's death, stock ownership in appellant was as follows: (1) M. Shier: 43.7 percent; (2) M. Shier Marital Trust (Shier Trust): 6.3 percent;[3] (3) R. Shamberg: 24.5 percent; and (4) J. Shamberg: 25.5 percent.[4]
7. According to a 2020 Biennial Report filed with the Alaska Department of Commerce for the 2019 tax year, M. Shier was appellant's registered agent. The report indicates that

[1] This information is provided in a 2020 Biennial Report filed by appellant for the 2019 tax year with the Alaska Department of Commerce, Community, and Economic Development - Division of Corporations, Business and Professional Licensing.

[2] The Shambergs and M. Shier lived near each other in Alaska and together decided to buy and rent the Alaska Property.

[3] The record does not include the trust agreement or other specific information as to the terms of the Shier Trust, including any beneficiaries of the Shier Trust. It appears that the Shier Trust was a living trust, as noted in a December 15, 2020 Memorandum of Action, which is discussed below.

[4] This information was reported on the federal Schedules K-1 for the 2020 tax year issued by appellant to its shareholders. A 2020 Biennial Report filed by appellant with the Alaska Department of Commerce for the 2019 tax year indicates the following stock ownership percentages in appellant: (1) M. Shier: 50 percent; (2) R. Shamberg: 24 percent; and (3) J. Shamberg: 26 percent. As later noted, after the passing of M. Shier, the Shier Trust received M. Shier's ownership percentage and became 50 percent owner of appellant.

appellant's physical address was M. Shier's address in Alaska and its mailing address was a P.O. Box in Alaska.[5]

8. Prior to and during 2020, M. Shier resided at her address in Alaska until her death on November 16, 2020 (discussed below). M. Shier and the Shier Trust shared the same address located in Alaska.

9. The Shambergs initially lived in Alaska but moved to a California address sometime before 2020, where they remained throughout the year.

10. On June 28, 2019, appellant sold the Alaska Property in an installment sale. Appellant utilized Alaska professionals to assist in completing the sale. At the time of the sale, instructions and a schedule were created as to monthly automatic payments by the buyer toward a promissory note for the Alaska Property. Payments were made to an escrow account at a mortgage company and then sent to appellant's corporate account at Charles Schwab Bank (Schwab Bank).[6]

Death of M. Shier

11. On November 16, 2020, M. Shier passed away.[7]

12. On December 15, 2020, appellant executed a Memorandum of Action (Memo) signed by the Shambergs. The Memo states:

- Minkemann & Associates, LLC, will continue to be appellant's accountant and prepare its tax returns for 2020.
- The corporate account at Schwab Bank has been reviewed and no distributions to M. Shier or the Shambergs have been made for 2020, so appellant retains sufficient funds for operations.
- All payments were timely as to the sale of the Alaska Property and are on deposit at Schwab Bank in appellant's corporate account.
- M. Shier, an original partner and shareholder, died on November 16, 2020.

[5] The 2020 Biennial Report indicates an address for M. Shier and the Shambergs at the P.O. Box in Alaska.

[6] A schedule provided by appellant shows its activity during 2020. The schedule shows deposits for "Mortgage Co payment" of $4,253.36 each month. The schedule shows other monthly transactions which appear to be the automatic receipt of interest and dividends, and reinvestment of the dividends. The schedule also shows that checks were cashed for payments to appellant's accountant R. Minkemann, of Minkemann & Associates, LLC, on August 6, 2020, and for "Road Service plowing" on August 13, 2020.

[7] Appellant provides M. Shier's Alaska death certificate.

- Appellant's corporate address will be changed from Alaska to the Shamberg's address in California "c/o [care of]" appellant's President, R. Shamberg.
- J. Shamberg, appellant's Secretary, will become Treasurer. When the estate of M. Shier is settled and it is determined who will take her place as shareholder, the office of Vice President will be filled. In the interim, the Shier Trust will be the shareholder, and the position of Vice President will remain vacant.
- All changes will be implemented at Schwab Bank, and appellant's accountant R. Minkemann of Minkemann & Associates, LLC, will be notified.

13. As noted above, the Shier Trust obtained M. Shier's ownership in appellant, resulting in the Shier Trust owning 50 percent of appellant.[8] M. Shier's daughter is a trustee or co-trustee of the Shier Trust.[9]
14. According to a Statement of Change filed with the Alaska Department of Commerce on December 14, 2021, R. Minkemann, using an Alaska address, replaced M. Shier as appellant's registered agent.
15. According to a 2022 Biennial Report for the 2021 tax year filed with the Alaska Department of Commerce on December 14, 2021, the Shamberg's address in California is indicated as the "care of" physical and mailing address for appellant.

Tax Returns

16. Appellant did not file a 2020 California income tax return.
17. Appellant filed a 2020 federal U.S. Income Tax Return for an S Corporation (Form 1120-S), which was prepared by R. Minkemann. On the return, appellant indicated a change of address and used the Shamberg's address in California.
18. The return reported a loss of $906, comprised of expenses for "plowing" of $50, "po box rental" of $206," and "professional fees" of $650.

[8] This was reported in a 2022 Biennial Report for the 2021 tax year filed with the Alaska Department of Commerce on December 14, 2021. The record does not clarify the process followed to determine the heir, or legal authorities followed by appellant relevant to the death of an S corporation shareholder and the subsequent transfer of S corporation shares.

[9] The name of M. Shier's daughter, which is provided on M. Shier's death certificate, is indicated as co-trustee of the Shier Trust on a 2022 Biennial Report for the 2021 tax year filed with the Alaska Department of Commerce on December 14, 2021. The other co-trustee indicated is G. Shier. According to the Memo, a G. Shier passed away in 2009. It appears this may be the same G. Shier. The report also indicates a mailing address of the Shier Trust in the state of Washington, and R. Shamberg testified at the hearing that M. Shier's daughter lives in Washington.

19. The return reported unrecaptured Internal Revenue Code (IRC) section 1250 gain of $9,792 and IRC section 1231 gain of $9,792.[10] Also, appellant's federal Form 4797, Sales of Business Property, reported IRC section 1231 gain from installment sales of $9,792.

20. The return reported Schedule K investment income of $39,793,[11] comprised of interest income of $37,761 and dividends of $32, and net income of $48,679 (investment income of $39,793 + gain of $9,792 – loss of $906). The return did not report any distributions to shareholders.

21. According to appellant's Form 6252, Installment Sale Income, the gross profit percentage (gross profit ÷ contract price) of the installment sale of the Alaska Property was 86.5 percent. The Form 6252, Schedule of Receipts, shows the receipt of installment sale income by appellant of $11,313 on December 31, 2020.[12]

22. The Form 6252 shows installment sale income of $9,792[13] after multiplying receipts of $11,313 by the gross profit percentage of 86.5 percent.[14]

23. The Schedules K-1 issued by appellant for R. Shamberg, J. Shamberg, M. Shier, and the Shier Trust show their pro rata shares of appellant's ordinary business loss, interest income, ordinary dividends, unrecaptured IRC section 1250 gain, and net IRC section 1231 gain. The Schedules K-1 reflect that, at the end of the year, the Shier Trust held the shares that were owned by M. Shier at the beginning of the year, which is consistent with the designation of the Shier Trust as the owner of M. Shier's shares upon her passing.

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[10] It appears that the return reported $9,792 of both unrecaptured IRC section 1250 and 1231 gain because the entire IRC section 1231 gain was attributable to unrecaptured IRC section 1250 gain from the sale of the Alaska Property, so the IRC section 1250 gain is not additional gain, but rather a component of the IRC section 1231 gain.

[11] The interest income is $15 from Schwab Bank and $39,745 from First Mortgage, Inc. It appears that First Mortgage, Inc. may be the mortgage company with the escrow account that holds payments made for the sale of the Alaska Property. The federal Form 1120-S reported that appellant used a cash basis accounting method so it may be appellant does not report the receipt of funds until actually received, as opposed to when received by the third-party escrow account.

[12] It appears that this amount differs from the total monthly payments made by the debtor/buyer because it does not include payments made to escrow but rather funds received by the S corporation. The record does not clarify how the amount and timing of the payment was determined.

[13] As noted above, on the installment sale income, appellant reported unrecaptured IRC section 1250 gain of $9,792 and IRC section 1231 gain of $9,792.

[14] There is no dispute that appellant did not receive any California source income.

24. Appellant filed a 2020 Alaska Corporation Net Income Tax Return (Form 6000), prepared by Minkemann and Associates, LLC, which indicated that appellant was an S corporation and had 100 percent apportionment to Alaska, and reported net Alaska income tax of zero.[15] The return used the Shamberg's address in California.
25. The Shambergs filed a California personal income tax return for 2020, reporting their pro rata shares of income and loss from appellant.

FTB Procedural History

26. Through its Integrated Non-Filer Compliance program, FTB received information from the IRS that appellant used a California address on its 2020 federal Form 1120-S.
27. On February 13, 2020, FTB issued to appellant a Demand for Tax Return (Demand), requiring appellant to file a return, provide evidence that it filed a return, or explain why it did not have a filing requirement.
28. R. Shamberg, on behalf of appellant, responded by completing a Nonqualified Business Entity Questionnaire provided with the Demand. He explained that a California shareholder signed checks for the corporation, that appellant did no business in California, and that appellant's only remaining activity was collection on a promissory note from the sale of the Alaska Property that occurred prior to 2020.
29. FTB issued to appellant a position letter determining that appellant had a California filing requirement and that appellant must file a return and pay tax.
30. After appellant did not file a return, FTB issued a Notice of Proposed Assessment (NPA) on September 25, 2023, that proposed tax of $800, a late filing penalty of $200, a demand penalty of $200, a filing enforcement cost recovery fee of $86, and interest.
31. Appellant protested the NPA, asserting that M. Shier passed away in November 2020, and that, as a result, appellant's address was changed from M. Shier's address to be "care of" the Shamberg's address in California.
32. FTB issued a determination letter stating that, after reviewing the information provided by appellant, FTB determined that appellant was doing business in California.
33. FTB affirmed the NPA in a Notice of Action on December 28, 2023.
34. This timely appeal followed.

[15] It does not appear from the record that appellant filed any other state or local income tax returns for the 2020 tax year, other than the Alaska Form 6000.

DISCUSSION

As a preliminary matter, OTA notes that if the Opinion holds that the first issue—whether appellant was doing business in California in 2020—is resolved in appellant's favor, then FTB's action as to the first issue will be reversed. FTB agrees that, if its action as to the first issue is reversed, then it concedes the remaining four issues. As a result, if OTA finds that appellant was not doing business in California in 2020, then the remaining issues will not be discussed, and appellant will prevail on all issues.

Issue 1: Whether appellant was doing business in California for the 2020 tax year.

R&TC section 23153(b)(3) provides that a corporation "doing business" in California is required to pay the annual minimum franchise tax. For the 2020 tax year, the amount of this tax was $800. (R&TC, §§ 23153(d)(1); 23802(c).) 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 alternatively considered to be "doing business" in California if it is organized or commercially domiciled in this state.[16] (R&TC, § 23101(b)(1).) First, OTA will examine whether appellant was doing business within the meaning of R&TC section 23101(a).

A. "Doing business" under R&TC section 23101(a): actively engaging in any transaction for the purpose of financial or pecuniary gain or profit

1. Applicable Law

Doing business includes "actively engaging in any transaction for the purpose of financial or pecuniary gain or profit." (R&TC, § 23101(a).) "This includes the purchase and sale of stocks or bonds, endorsing the notes of a subsidiary corporation by a parent corporation and the leasing of real property by the parent corporation to the subsidiary and other tenants, and liquidating activities consisting of sales, rentals, collections on notes, etc." (Cal Code Regs., tit. 18, § 23101(a).) "The mere receipt of dividends and interest by a corporation and the distribution of such income to its shareholders does not constitute 'doing business.'" (Cal Code Regs., tit. 18, § 23101(b).)

"[T]here need not be extensive activities to constitute 'doing business.' By its terms, the statute applies if there is but one transaction for profit." (*Appeal of the Blanc Corporation* (64-

[16] There is no dispute that appellant was not organized in California. A taxpayer is also doing business if it meets certain thresholds under R&TC section 23101(b)(2)-(b)(4). There is no dispute that appellant does not meet those thresholds. The alternative tests for doing business under R&TC section 23101(b) are applicable for tax years beginning on or after January 1, 2011. (R&TC, § 23101(b).)

SBE-022) 1964 WL 1427 (*Blanc Corporation*); see also *Hise v. McColgan* (1944) 24 Cal.2d 147, 151 (*Hise*) [regular course of business or transactions unnecessary to be doing business]; *Golden State Theatre & Realty Corp. v. Johnson* (1943) 21 Cal.2d 493, 496 (*Golden State Theatre*).)[17] The relevant inquiry is whether the activity or transaction was motivated by financial or pecuniary gain. (*Hise*, *supra*, 24 Cal.2d at p. 151.) However, any such transaction must be engaged in "actively." (*Blanc Corporation*, *supra*.) The word "actively" must be interpreted as the opposite of passively or inactively, and as used in R&TC section 23101(a), it means active participation in any transaction for pecuniary gain or profit. (See *Golden State Theatre*, *supra*, 21 Cal.2d at p. 496.)

2. FTB Contentions

In this present case, FTB contends that appellant was doing business under R&TC section 23101(a) because: (1) appellant received income from the sale of the Alaska Property; (2) appellant used a California address to conduct business; (3) appellant's California shareholder(s) signed checks in California related to its business; (4) a shareholder participated in corporate virtual meetings from within California; and (5) R. Shamberg signed appellant's tax returns from within California. FTB contends that appellant's change of address was for the convenience of its managing officers and shareholders and for the purpose of financial or pecuniary gain or profit. FTB argues that maintaining a California address and filing tax returns are an essential part of appellant's function to maintain its own existence and its income stream, and that appellant's continued existence, along with its ongoing receipt of payments from the Alaska Property sale, constitute active business operations. FTB contends that appellant's California shareholders and officers managed the business from California after M. Shier passed away, which rises to the level of doing business under R&TC section 23101(a).

3. Appellant's Contentions

At the hearing, appellant's President R. Shamberg provided testimony, as follows. He stated that the original purpose of appellant was to hold and rent the Alaska Property. He asserted that the only transactions during 2020 were paying internal bills, including a reimbursement by J. Shamberg to herself for a P.O. Box expense and a snowplow payment made to clear snow blocking access to the P.O. Box. R. Shamberg explained that any virtual meetings conducted as to appellant would have involved internal matters and would have been held with R. Minkemann or M. Shier or, after she died, her estate attorneys. R. Shamberg

[17] In addition, a transaction does not need to result in actual profit for it to constitute doing business. (See *Hise*, *supra*, 24 Cal.2d at pp. 150-151.)

stated that appellant had no office and that its funds, accountant, financial records, and the property sold were located in Alaska. R. Shamberg stated that the only records he possessed were those related to internal matters.[18] He also stated that appellant would receive no benefit by registering with the California SOS.

R. Shamberg asserted that, before M. Shier died, she was in charge of appellant's operations because she lived in Alaska. He stated that M. Shier was the controlling shareholder and the person who signed most of the checks. He explained that no individual ever manifested control because a consensus between the shareholders was required before taking any action. He stated that there were no distributions or discussions of distributions in 2020. R. Shamberg explained that, after M. Shier's estate was resolved, M. Shier's primary heir, who lives outside California, received M. Shier's share of appellant. R. Shamberg asserted that he changed appellant's address to the one in California as a "care of" address so that the tax return could be completed. He stated that, from the time M. Shier died until the end of 2021, appellant took no action, other than trying to determine M. Shier's heirs and working to resolve any related legal issues. R. Shamberg asserted that in 2021, the 2020 federal and Alaska income tax returns were completed in Alaska by the Alaska accountant and that he wrote a check to the accountant and signed the returns in California.

4. Analysis

Under R&TC section 23101(a), "doing business" requires actively engaging in any transaction for financial or pecuniary gain or profit. Here, appellant's California activities in 2020 do not constitute "doing business" under R&TC section 23101(a). Appellant's mere receipt of dividends and interest does not constitute doing business under R&TC section 23101(a). (See Cal. Code Regs., tit. 18, § 23101(b).) And appellant's receipt of proceeds occurred in Alaska, not California, and were from the sale of a property located in Alaska pursuant to a 2019 sale executed in Alaska. The payments were routed to and from bank and escrow accounts from Alaska-based financial institutions, with oversight by an accountant in Alaska.[19]

The above-mentioned activities in Alaska were not actively engaged in by the Shambergs or appellant in California. The income stream from the debtor/buyer consisted solely of automated payments pursuant to a pre-existing 2019 agreement. Any activities by the

[18] It appears that records as to internal matters means documentation such as administrative bills (e.g., snowplow service), filings with government agencies such as the Alaska Department of Commerce, shareholder ownership records, etc.

[19] Whether or not the activities in Alaska qualify as actively engaging in a transaction for pecuniary gain or profit, such activities did not occur in California.

Shambergs or appellant in California did not affect, nor were they intended to affect, the continued receipt of the automatic payments in Alaska.

Appellant here took no active steps in California for financial or pecuniary gain or profit. Appellant used a California "care of" address, not for financial or pecuniary gain or profit, but for administrative purposes. The reimbursement of the expenses by the Shambergs, such as for the P.O. Box, did not facilitate any income-producing activity, as such tasks were completed to maintain basic corporate administrative functions. And appellant's virtual meetings in 2020 pertained to estate matters and internal recordkeeping, not decisions affecting appellant's Alaska-based transactions. Contrary to FTB's contentions, mere maintenance of corporate existence does not mean active engagement in a transaction for financial or pecuniary gain or profit. And while FTB points to the signing of the 2020 tax return by R. Shamberg as evidence that appellant was doing business in California, the tax return was completed and signed in 2021, the year subsequent to the one at issue.[20]

Therefore, there was no action taken by appellant in California as to the Alaska-based transactions, and any activities that occurred in California do not rise to the level of engaging in a transaction for financial or pecuniary gain or profit. Accordingly, appellant was not doing business in California in 2020 under R&TC section 23101(a).

B. "Doing business" under R&TC section 23101(b)(1): commercially domiciled in this state.

1. Applicable Law

"Commercial domicile" has been defined as "the place where the corporate management functions" and "the place where the real control exists with respect to the business activities of the corporation." (*Appeal of Norton-Simon, Inc.* (72-SBE-008) 1972 WL 2642 (*Norton-Simon*.)[21] Commercial domicile has also been defined as the place where a corporation engages in its greatest and most centralized activity, the place from which the business is directed and controlled, and where a major part of the business is conducted. (See *Appeal of Flexible, Inc.* (66-SBE-069) 1966 WL 1410; *Appeal of Safeway Stores, Inc.* (62-SBE-014) 1962 WL 1421.)

[20] As a result, there is no need for OTA to address whether signing the tax return in California would rise to the level of engaging in a transaction for financial or pecuniary gain or profit.

[21] Although cases cited here discuss commercial domicile in the context of determining the situs of intangible income for tax purposes, these cases are also relied upon to determine whether a taxpayer is "doing business" in California under R&TC section 23101(b) due to being commercially domiciled in this state.

Although the location of actual management and control has repeatedly been stressed as a major factor in determining the situs of a corporation's commercial domicile, the location of ultimate control has been rejected where it does not coincide with the place of actual management and control. (See *Appeal of Vinnell Corporation* (78-SBE-030) 1978 WL 3943 (*Vinnell Corp*).) For instance, in *Southern Pacific Co. v. McColgan* (1945) 68 Cal.App.2d 48 (*Southern Pacific*), the court upheld FTB's determination that the taxpayer, though incorporated in Kentucky and holding directors' meetings in New York, was commercially domiciled in California because the majority of its business operations, management, and economic benefits occurred in California. (*Id.* at pp. 78-82.) The court stated:

> We perceive the law to be that where the corporation has only a paper domicile, where the only function performed by the state of incorporation is to breathe life into the corporation, and where no substantial corporate activities are thereafter carried on in that state, then the law looks at such corporation and says that that state where, under the facts, the corporation receives its greatest protection and benefits, that state where the greatest proportion of its control exists, that state shall be the commercial domicile . . . .
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> (*Id.* at p. 81.)

In *Vinnell Corp*, OTA's predecessor, the Board of Equalization (BOE), concluded that the taxpayer was not commercially domiciled in California because it received insufficient benefits and protection from California and the greatest proportion of the taxpayer's control was exercised outside of California. (*Vinnell Corp*, *supra* [taxpayer's California connections were "artificial and lacking in substance"].) Specifically, BOE found that the evidence did not show that the taxpayer's affairs were actually managed and controlled from California, and that there was no center of active operational control here. (*Ibid*.) For instance, BOE held that the board of director's meetings in California ratified current operational and broad-ranged management decisions made outside California, which was passive acquiescence after the fact. (*Ibid*.) BOE noted that the general ledger was in California, but the actual operating records and books of account were outside California under the supervision of foreign officers. (*Ibid*.) BOE also noted that operating income and expenses were deposited to or withdrawn from bank accounts maintained outside California, and the only deposits to the California account were the taxpayer's dividend and interest income and residual funds. (*Ibid*.)

In *Norton-Simon*, BOE held that the taxpayer was commercially domiciled in California, despite being incorporated in Delaware and maintaining its only office, books, records, assets, officers, shareholder meetings, tax filings, and property interests in Washington. (*Norton-Simon*, *supra*.) BOE concluded that the taxpayer's corporate management and control were

centered in California after the taxpayer's transformation into an investment company following the sale of its plywood business in Washington. (*Ibid*.) BOE's determination was based on evidence that substantive business activity related to the investment operations—including investment decision-making by the Executive Committee, daily securities trading, and use of Los Angeles bank accounts—originated and were directed from California, and that its operations became closely associated with a California corporation that owned a majority of its stock. (*Ibid*.)

2. FTB's Contentions

FTB asserts that, upon the death of M. Shier, appellant changed its address to the Shamberg's address in California, and the Shambergs became the only corporate directors and active corporate officers. Therefore, FTB argues that California became the state where appellant's control existed, and its commercial domicile shifted to California.

3. Appellant's Contentions

For the same reasons given above as to R&TC section 23101(a), appellant argues that it was not commercially domiciled in California and was not doing business in California pursuant to R&TC section 23101(b)(1). To summarize, R. Shamberg testified that he changed appellant's address to the one in California as a "care of" address so that the tax return could be completed. He stated that, from the time M. Shier died until the end of 2021, appellant took no action, other than trying to determine M. Shier's heirs and working to resolve any related legal issues. He also asserted that appellant's funds, the Alaska Property, accountant, financial records, and financial transactions were in Alaska.

4. Analysis

OTA examines whether appellant's commercial domicile shifted to California in 2020 upon the death of M. Shier.[22] Upon her passing, the Shambergs became appellant's sole officers and directors. At that time, appellant issued the Memo which described the occurrence or formalization of certain corporate actions. Specifically, the Memo stated that: (1) appellant's address is revised to be in California; (2) J. Shamberg is designated as Treasurer to replace M. Shier; (3) the Shier Trust is designated as interim shareholder of M. Shier's shares, resulting

[22] There is no dispute that, prior to M. Shier's death, appellant was not commercially domiciled in California, and FTB's arguments as to commercial domicile relate to activities that occurred after the death of M. Shier.

in the Shier Trust holding 50 percent of the shares;[23] (4) the corporate account at Schwab Bank was reviewed and no distributions were made in 2020, so sufficient funds were retained for operations; (5) all installment payments were timely and on deposit at appellant's corporate account;[24] and (6) all changes will be implemented at Schwab Bank and appellant's Alaska accountant will be notified.

OTA first notes that the automated collection of installment payments from the Alaska Property sale was managed through Alaska-based institutions and overseen by an Alaska accountant who also maintained appellant's actual operating financial records in Alaska. After M. Shier's death, these substantial aspects of appellant's activities operated exactly as they did previously. In addition, appellant's single largest activity during 2020 was an Alaska-originated transaction, which is appellant's receipt of income of $11,313 on December 31, 2020, from the 2019 Alaska Property sale, and all of appellant's expenses were incurred in Alaska, such as for the snowplow, P.O. Box rental, and Alaskan accountant. Therefore, appellant's funds, accountant, financial records, and financial transactions remained based in Alaska until the end of 2020.

Appellant received the greatest benefits and protection from Alaska. For instance, appellant relied upon Alaska law and institutions for enforcement of the installment note, escrow and banking services, and professional accounting. On the other hand, California is the location of appellant's updated mailing address (as of November or December 2020), and where appellant's shareholders and officers–the Shambergs–resided.[25] Based on the above, OTA concludes that appellant derived less meaningful benefits or protection from California, whereas appellant's primary functions and the lion's share of its operations and financial infrastructure continued to be based in Alaska, and those activities received the benefits and protection of Alaska. As a result, the evidence does not show that, after M. Shier's death, California was where appellant enjoyed the greatest benefits and protection.

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[23] There is no evidence to clarify the process, decision, or legal authorities followed regarding the assignment of the Shier Trust as interim shareholder. The transfer appears to be primarily motivated by estate succession planning, as the shares would ultimately be transferred to M. Shier's heir, who was also trustee of the Shier Trust.

[24] The payments to the Alaska accountant on August 6, 2020, and snowplow service on August 13, 2020, occurred prior to M. Shier's death and are therefore, less relevant than the activities that occurred after her death when commercial domicile is alleged to have shifted. OTA also notes that appellant's 2020 federal and Alaska tax returns were prepared by an Alaskan accountant in 2021, and signed by R. Shamberg in 2021, which is after the year at issue.

[25] While not conclusive, OTA also notes that appellant registered with the Alaska Department of Commerce, but not with the California SOS.

After M. Shier's death, appellant assigned her shares to the Shier Trust, which was based outside California, and the Shier Trust became a 50 percent shareholder.[26] Therefore, shareholder control after the transfer was divided between California and outside California, just as it was before M. Shier's death.[27]

In addition, while the Shamberg's actions after the death of M. Shier, including those described in the Memo, demonstrate some management and control originating in California, the actions were not significant decisions as to "substantial corporate activities." (See *Southern Pacific*, *supra*, 68 Cal.App.2d at p. 81.) Rather, they were administrative acts or formalities "lacking in substance" which had no material effect on appellant's primary functions in Alaska, such as the mere change of appellant's mailing address to a "care of" address in California and the residency of appellant's shareholders and officers. (See *Vinnell Corp*, *supra*.) Appellant's Memo documents a corporate account review and confirmation of timely payments, and communication by the Shambergs to the Alaskan accountant and Schwab Bank of the changes described in the Memo.[28] However, these actions represent routine administrative maintenance, and appellant's income-generating activities continued unchanged without modification.[29]

Furthermore, appellant's activities in Alaska required minimal active management or decision-making activity from California. Installment payments were automatically collected by a third-party mortgage company based on a previously executed agreement. As a result, the Shamberg's ability to control or manage any business activity was minimal, as there was essentially no active business to manage or control.[30] Notably, appellant's activities in Alaska, and any related future issues that could arise, were controlled by Alaska law, agreements, and

[26] The Shier Trust used an Alaska address, and the trustee was located in Washington.

[27] Prior to M. Shier's passing, ownership was split evenly between the Shambergs (50 percent) and M. Shier/the Shier Trust (50 percent). Upon her death, M. Shier's interest transferred to the Shier Trust, resulting in the trust holding 50 percent of appellant, pending estate settlement.

[28] Any virtual meetings held in California involved similar administrative matters. It is not clear when any meetings occurred, but they involved discussions with M. Shier's estate attorneys or appellant's accountant.

[29] OTA notes that, while J. Shamberg was designated as Treasurer and the Shier Trust became a 50 percent shareholder of appellant, the record does not show that any actions were taken, or decisions made, by J. Shamberg (as well as R. Shamberg) or the Shier Trust on behalf of appellant for the remainder of the year after such designations.

[30] Distributions were not discussed or made during 2020.

institutions. Therefore, the evidence does not show that appellant's greatest proportion of control existed in California.

Based on the foregoing, appellant's commercial domicile did not shift to California upon M. Shier's death. Accordingly, appellant was not doing business in California in 2020 under R&TC section 23101(b)(1). Because OTA finds that appellant was not doing business in California in 2020, the remaining issues are held in favor of appellant, as agreed to by FTB.

HOLDINGS

1. Appellant was not doing business in California for the 2020 tax year.
2. Appellant established a basis to abate the late filing penalty.
3. Appellant established a basis to abate the demand penalty.
4. The filing enforcement cost recovery fee is abated.
5. Interest is abated.

DISPOSITION

FTB's action proposing tax, late filing and demand penalties, the filing enforcement cost recovery fee, and interest is reversed.

Signed by:
Josh Lambert
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Josh Lambert
Administrative Law Judge

We concur:

DocuSigned by:
Steven Kim
5DD7EF644397430...
Steven Kim
Hearing Officer

DocuSigned by:
Kenneth Gast
3AE5C32BB93B456...
Kenneth Gast
Administrative Law Judge

Date Issued: 5/28/2025