

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:  <b>MARIVEL PULIDO</b>	) ) ) ) ) )	OTA Case No. 18011071  Date Issued: August 24, 2018
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**OPINION**

Representing the Parties:

For Appellant:	Marivel Pulido
For Respondent:	Samantha Q. Nguyen, Tax Counsel

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code section 19045,<sup>1</sup> Marivel Pulido (appellant) appeals an action by the Franchise Tax Board (FTB or respondent) on appellant’s protest of a proposed assessment of additional tax in the amount of \$1,845, a delinquent filing penalty of \$461.25, and applicable interest, for the 2015 tax year.

Appellant waived her right to an oral hearing; therefore, we decide the matter based on the written record.

**ISSUES**

1. Has appellant demonstrated error in respondent’s proposed assessment for tax year 2015?
2. Is appellant entitled to abatement of the late-filing penalty for tax year 2015?
3. Is appellant entitled to abatement of interest for tax year 2015?

**FACTUAL FINDINGS**

1. Respondent obtained income information indicating appellant was required to file a 2015 California state tax return. Appellant’s income totaled \$51,661, including wages, dividend income, and income from stock sales.
2. On May 9, 2017, respondent sent a Request for Tax Return to which appellant did not

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<sup>1</sup> Unless otherwise indicated, all statutory references are to sections of the Revenue and Taxation Code.

- respond.
3. Respondent then issued a Notice of Proposed Assessment (NPA) on July 10, 2017, proposing tax of \$1,845, a late-filing penalty of \$461.25, plus interest.
  4. In response, appellant submitted a Quick Resolution Worksheet protesting the assessment without providing any reason for her disagreement. She did not file a 2015 tax return.
  5. On September 29, 2017, respondent issued a Notice of Action, affirming its NPA.
  6. Appellant timely appealed and submitted an unsigned copy of a federal tax return (Form 1040), claiming dependent exemptions for her two daughters (M.B. and E.B.) and for her brother (E.P.).
  7. Respondent submitted a copy of E.P.'s filed, 2015 California state tax return, which shows that E.P. claimed a personal exemption for himself, and noted that this meant E.P. cannot be claimed as a dependent by another person.
  8. An Internal Revenue Service (IRS) Account Transcript, requested by respondent on May 2, 2018, indicates that appellant did not file the 2015 federal tax return that she submitted with her appeal.

### DISCUSSION

#### Issue 1 - Has appellant demonstrated error in respondent's proposed assessment for tax year 2015?

California imposes a tax upon the entire taxable income of every resident of this state. (§ 17041.) Every individual subject to the personal income tax must file a return with FTB reporting the individual's gross income from all sources, as well as allowable deductions and credits, so long as the individual's taxable income exceeds the minimum threshold. (§ 18501.) If an individual fails to file a return, FTB is authorized to estimate the individual's net income based on any available information, and propose an assessment. (§ 19087(a).)

When FTB assesses tax based on an estimate of income, FTB's initial burden is to show why its assessment is reasonable and rational. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509, 514; *Appeal of Myers*, 2001-SBE-001, May 31, 2001.)<sup>2</sup>

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<sup>2</sup> State Board of Equalization's precedential decisions may be accessed at <http://www.boe.ca.gov/legal/legalopcont.htm>.

Once FTB has met its initial burden, the assessment is presumed correct, and the taxpayer has the burden of proving it to be wrong. (*Todd v. McColgan*, *supra*, 89 Cal.App.2d at p. 514; *Appeal of Myers*, *supra*.) Appellant must introduce credible evidence to support her assertion that respondent's determination is incorrect. (*Appeal of Seltzer*, 80-SBE-154, Nov. 18, 1980.)

Respondent used third-party wage records, dividend records, and stock sales records to estimate appellant's income and tax liability. Appellant does not dispute that her income is greater than the minimum threshold requiring her to file a California state tax return; yet, she has not filed a return.<sup>3</sup> Nor does appellant claim that respondent incorrectly estimated her income. Respondent's estimate was rational and reasonable, and appellant has presented no credible evidence showing that determination was incorrect.

Instead appellant asserts that the amount of her tax liability should be decreased based on her claim that she is entitled to dependent exemption credits for her brother and her two daughters. However, income tax deductions are a matter of legislative grace, and a taxpayer who claims a deduction has the burden of proving that he or she is entitled to that deduction. (See *New Colonial Ice Co. v. Helvering* (1934) 292 U.S. 435, 440.) Appellant failed to establish that she is entitled to claim E.P., or M.B. and E.B., as dependents. Appellant's brother, E.P., filed his own 2015 state tax return, claimed his own income, claimed an exemption credit for himself, and requested a refund of overpaid taxes. E.P. did not check the box on his return that would indicate that another taxpayer could claim him as a dependent.

Furthermore, appellant has not substantiated her right to claim M.B. and E.B. as dependents. She submitted a copy of an unsigned, federal tax return that purports to claim M.B. and E.B. as her dependents; however, there is no record that document was filed with the Internal Revenue Service. Appellant still has not filed her California state tax return, nor has she provided other evidence substantiating her entitlement to claim dependency exemptions for her daughters. Appellant has therefore failed to prove that respondent's proposed assessment and disallowance of appellant's claimed exemption credits were incorrect.

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<sup>3</sup> For 2015, single taxpayers with no dependents whose income exceeded \$16,256 were required to file a state tax return. Even if appellant were to substantiate that she is entitled to claim two or more dependents, her \$51,661 income exceeds the minimum filing threshold (an individual with two or more dependents must file a 2015 tax return if his or her income exceeded \$35,914).

Issue 2 - Is appellant entitled to abatement of the late-filing penalty for tax year 2015?

If a taxpayer fails to make and file a return on or before the due date for that return, then unless the taxpayer establishes that the failure was due to reasonable cause, 5 percent of the tax due shall be added to the tax balance for each month, not to exceed 25 percent. (§ 19131(a).)

Appellant still has not filed her 2015 tax return. Based on FTB's determination of \$1,845 tax due on the due date for appellant's 2015 return, a late-filing penalty of \$461.25 was properly assessed.

Where no evidence has been offered to show that the failure to file a return was due to reasonable cause and not to willful neglect, the penalty may not be abated. (*Appeal of Woodview Properties, Inc.*, 84-SBE-151, Oct. 10, 1984.) Respondent requested that appellant file her tax return (due April 15, 2016) by June 14, 2017. Appellant did not respond until after respondent issued its NPA and has not filed a California tax return for 2015. Appellant did not state any reason for her failure to file her return; therefore, she has not shown that there was reasonable cause that precluded her from filing, and the late-filing penalty was properly applied.

Issue 3 - Is appellant entitled to abatement of interest for tax year 2015?


Appellant appealed the full amount of the assessment, including interest. For any year that tax is not paid on time, interest shall be paid on the outstanding amount, including penalties. (§ 19101.) Payment of interest is mandatory. It is not a penalty, but merely compensation for the use of money. (*Appeal of Jaegle*, 76-SBE-070, June 22, 1976.) Payment of interest may not be excused for reasonable cause. (*Appeal of Goodwin*, 97-SBE-003, Mar. 19, 1997.) Although relief from interest may be warranted under limited circumstances (see §§ 19104, 21012, & 19112), appellant has offered neither evidence nor argument that these circumstances apply. Accordingly, there is no basis on which to relieve interest for the year at issue.

HOLDING

Appellant was required to file a California state tax return for 2015, but has not. Appellant has not provided evidence showing that respondent's assessment of tax liability, a late-filing penalty, and interest, was incorrect.

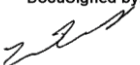
DISPOSITION

We sustain respondent's action.

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Teresa A. Stanley  
Administrative Law Judge

We concur:

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Nguyen Dang  
Administrative Law Judge

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Tommy Leung  
Administrative Law Judge