

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)	OTA Case No. 18042687
RONALD K. RIACH)	Date Issued: November 30, 2018
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)	

OPINION

Representing the Parties:

For Appellant:	Ronald Riach
For Respondent:	Bradley Coutinho, Tax Counsel

M. GEARY, Administrative Law Judge: Pursuant to Revenue and Taxation Code section 19045,¹ Ronald K. Riach (appellant) appeals an action by the Franchise Tax Board (FTB) proposing \$2,957 of additional tax, a late-filing penalty of \$739.25, and applicable interest, for the 2015 tax year.

Appellant waived his right to an oral hearing. Therefore, we decide the matter based on the written record.

ISSUES

1. Is appellant liable for the additional tax?
2. Is appellant liable for the late-filing penalty?

FACTUAL FINDINGS

1. Appellant did not file a California income tax return for the 2015 tax year.
2. According to reliable information provided to FTB by third parties, including appellant’s employer, appellant had estimated gross income in 2015 of \$94,578.
3. On May 9, 2017, FTB sent to appellant a “Request for Tax Return,” which explained that FTB believed appellant was required to file a tax return for the 2015 tax year, and instructed appellant to file a 2015 return, provide evidence that he had already filed one, or provide

¹Unless otherwise indicated, all “section” or “§” references are to the Revenue and Taxation Code.

information that he was not required to file one. The request instructed appellant to respond by June 14, 2017.

4. Having received no response to the request, on July 10, 2017, FTB sent appellant a Notice of Proposed Assessment (NPA) determining \$5,784 of tax, less withholding credits of \$2,827, for a net additional tax due of \$2,957, to which FTB added a late-filing penalty of \$739.25, plus interest.
5. On or about September 11, 2017, appellant filed a timely protest of the proposed assessment. Appellant's protest states that his wife died on January 14, 2016, that his filing status for 2015 was married filing jointly, and that he planned to file his 2015 return, which will show that he owes no tax. The record does not show that appellant filed a 2015 return.
6. On November 3, 2017, FTB issued to appellant a "Notice of Action" (NOA), which affirmed the NPA. This timely appeal followed.

DISCUSSION

Issue 1 - Is appellant liable for the additional tax?

An individual was required to file a 2015 California income tax return if his or her California earnings equaled or exceeded certain thresholds. (§ 18501.) For the 2015 tax year, the thresholds for a single individual under age 65 with no dependents were gross income of \$16,256 or adjusted gross income of \$13,005. (*Ibid.*; see, also, FTB's "Personal Income Tax Booklet 2015" [Forms and Instructions for the 2015 California 540].) For married persons under age 65 with no dependents who filed jointly, the 2015 thresholds were gross income of \$32,514 or adjusted gross income of \$26,012. (*Ibid.*) The highest threshold for 2015, for persons over age 65 (both) filing jointly with two or more dependents, was \$52,077. (*Ibid.*)

The FTB's determination is presumed to be correct, and a taxpayer has the burden of proving error. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509, 514; *Appeal of Michael E. Myers*, 2001-SBE-001, May 31, 2001.)² The same presumption applies to reasonable reconstructions of a taxpayer's income. (*Appeal of K. L. Durham*, 80-SBE-024, Mar. 4, 1980.) Unsupported

² Parties may cite formal and memorandum opinions of the State Board of Equalization (BOE) that were adopted prior to January 1, 2018, and such opinions will be given precedential effect except to the extent a decision issued by OTA has limited such effect. (Cal. Code Regs, tit. 18, § 30501(d)(3).) BOE opinions are generally available for viewing on the BOE's website: <<http://www.boe.ca.gov/legal/legalopcont.htm#boeopinion>>.

assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Aaron and Eloise Magidow*, 82-SBE-274, Nov. 17, 1982.)

In this case, FTB reasonably estimated appellant's gross income for 2015 at \$94,578, and his taxable income for that year at \$90,534, based on information obtained from appellant's employer and other third parties. Although appellant argues that his 2015 tax return will show he owes no additional tax, he has not filed a 2015 return, and he has not provided evidence to support his argument. Consequently, we find that appellant owes additional tax of \$2,957 for the 2015 tax year.

Issue 2 - Is appellant liable for the late-filing penalty?

An individual who files on a calendar year basis must file a return on or before April 15 of the year following the close of the taxable year. (§ 18566.) FTB must impose a late-filing penalty when a taxpayer does not 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 due to willful neglect. (§ 19131.) The late-filing penalty is five percent of the amount of tax required to be shown on the return for every month that the return is late, up to a maximum of 25 percent. (§ 19131(a).) To establish reasonable cause, the taxpayer "must show that the failure to file timely returns occurred despite the exercise of ordinary business care and prudence, or that cause existed as would prompt an ordinarily intelligent and prudent businessman to have so acted under similar circumstances." (*Appeal of Howard G. and Mary Tons*, 79-SBE-027, Jan. 9, 1979.)

Appellant's 2015 return was due by April 15, 2016. It is now more than two years past that date, and appellant still has not filed a 2015 return. He has not explained why he did not file a timely return, and he has not provided any evidence to show that his failure to file timely was due to reasonable cause and not willful neglect.³ We therefore find that appellant is liable for the late-filing penalty.


³ While appellant states in his protest that his wife died on January 14, 2016, he does not argue, or provide any evidence to show, that his wife's death prevented him from filing a timely 2015 return.

HOLDING


1. Appellant owes additional tax of \$2,957, plus interest, for the 2015 tax year.
2. Appellant is liable for the late-filing penalty.


DISPOSITION

We sustain FTB's action in full.

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Michael F. Geary
Administrative Law Judge

We concur:

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Tommy Leung
Administrative Law Judge

DocuSigned by:

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Daniel K. Cho
Administrative Law Judge