

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of: ANTHONY OTTLINGER) OTA Case No. 18011758)) Date Issued: September 28, 2018))))
---	---

OPINION

Representing the Parties:

For Appellant: Anthony Ottlinger

For Franchise Tax Board (FTB): Samantha Nguyen, Tax Counsel

G. THOMPSON, Administrative Law Judge: Pursuant to California Revenue and Taxation Code section 19324,¹ Anthony Ottlinger (appellant) appeals an action by FTB denying his claim for refund for the 2014 tax year.² Office of Tax Appeals Administrative Law Judges Grant S. Thompson, Sara A. Hosey, and Michael F. Geary held an oral hearing in this matter on June 26, 2018. When the hearing concluded, Administrative Law Judge Grant S. Thompson closed the record and took the matter under submission.

ISSUE

Is appellant liable for the tax, penalty, and interest determined by FTB and subsequently paid by him?

FACTUAL FINDINGS

1. Appellant was a California resident during 2014.

¹ All statutory references are to sections of the California Revenue and Taxation Code.

² As discussed further below, FTB proposed an assessment. Appellant paid the proposed assessment and then filed a claim for refund. The exact amount of appellant’s refund claim is unclear. Through amounts withheld and a payment in response to FTB’s proposed assessment, appellant paid a total of \$2,758.89 for the 2014 tax year, which amount includes tax, interest and a late-filing penalty. FTB treated this amount as the amount of the refund claim. In his refund claim, appellant asserted that the liability determined by FTB was “way too much money.”

2. Appellant's taxable income for 2014 included \$26,615 from the Regents of University of California Davis (UC Davis), \$18,445 from Fidelity Investments, another \$12,219 from Fidelity Investments, and interest income of \$32.³ The foregoing amounts total \$57,311 and form the basis of the proposed assessment that FTB later issued.
3. Appellant did not file a timely California income tax return for the 2014 tax year.
4. FTB received information from the California Employment Development Department (EDD) and the Internal Revenue Service (IRS) that, during 2014, appellant received the \$57,311 of taxable income noted above.
5. After receiving this income information, FTB requested that appellant file a tax return, provide evidence that he had already filed a tax return, or provide information showing that he was not required to file a 2014 tax return. FTB provided appellant with information indicating that, for the 2014 tax year, a single taxpayer that was under the age of 65 was required to file a return if he earned \$16,047 or more.
6. Appellant responded by asserting that he was not sure if he was supposed to file. For 2014, the tax year at issue, he provided a Form 1099-R showing \$12,219 of the income he received from Fidelity Investments and a Form W-2 showing the wages of \$26,615 he received from UC Davis.⁴
7. FTB notified him that he must file a tax return. FTB also notified him that a late-filing penalty might be imposed and that, if he did not file a tax return, FTB would estimate his tax based on the information it had received.
8. In response, appellant provided a receipt showing a \$630 contribution to a church during 2014.⁵ He also again provided the Form W-2 from UC Davis showing \$26,615 of wage income.⁶

³ All amounts are rounded to the nearest dollar, unless otherwise indicated.

⁴ He also provided documents related to the 2015 tax year which are not relevant to this appeal.

⁵ FTB's calculation of appellant's tax liability allowed him a standard deduction of \$3,992. As appellant has not shown that he is entitled to deductions exceeding this amount, his \$630 contribution does not change his tax liability.

⁶ In addition, he provided a Form 1099-R from UC Davis showing a taxable distribution of \$4,498. This \$4,498 amount was not included in the proposed assessment that FTB later issued. Therefore, it is not at issue in the appeal.

9. On July 1, 2016, FTB issued a Notice of Proposed Assessment (NPA) based on its estimate that appellant earned \$57,311 of taxable income. It calculated total tax of \$2,358. After accounting for withholding credits of \$1,160, it proposed additional tax of \$1,198 and a late-filing penalty of \$299.50, plus accrued interest. In the NPA, FTB again requested that appellant file a tax return, provide a copy of any previously filed tax return, or explain why he did not have a filing requirement.
10. Appellant responded by again providing the Form W-2 from UC Davis.⁷
11. On or about August 8, 2016, appellant submitted a partially completed tax return on Form 540. On the return, he listed his name, address and date of birth, but did not list any income or tax liability.
12. On May 9, 2017, appellant paid the proposed assessment.
13. On May 13, 2017, appellant filed the claim for refund that is the subject of this appeal. Among other things, appellant contended that the fact his tax return was incomplete did not make it false. He also asserted that he did not complete the tax return because he did not understand the process.
14. On June 23, 2017, FTB denied appellant's claim for refund. FTB explained that appellant's tax liability was based on information showing that he earned \$57,311 during 2014.
15. Appellant then filed this timely appeal.

DISCUSSION

Estimation of Income and Tax

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. (§ 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).)

⁷ He also again provided a Form 1099-R from UC Davis showing a taxable distribution of \$4,498. As noted above, this \$4,498 amount was not included in FTB's proposed assessment and is not at issue in the appeal.

If FTB proposes an assessment based on an estimate of income, FTB's initial burden is to show why its assessment is reasonable and rational. (*Appeal of Michael E. Myers*, 2001-SBE-001, May 31, 2001.) FTB's use of information from various sources to estimate a taxpayer's taxable income, when a taxpayer failed to file his own return, is a reasonable and rational method of estimating taxable income. (*Ibid.*) Once FTB has met its initial burden, the assessment is presumed correct and the taxpayer has the burden of proving it to be wrong. (*Ibid.*)

Here, FTB's proposed assessment was reasonably and rationally based on information from the EDD and the IRS showing that appellant received \$57,311 of taxable income. At the oral hearing, appellant argued, among other things, that FTB was asking for "too much" and that he did not know if its records were accurate. However, he provided no evidence that FTB overstated his tax liability.⁸ Therefore, appellant has not shown any error in the amount of tax determined by FTB, and he has not shown any basis for a refund of tax.

Late-Filing Penalty

Section 19131 imposes a late-filing penalty when a taxpayer fails to file a timely return unless the taxpayer can show that the failure to timely file a return was due to reasonable cause and was not due to willful neglect. The penalty is five percent of the tax due for each month (or fraction of a month) that a tax return is not filed after it is due, not to exceed 25 percent of the tax. (§ 19131(a).) Thus, if a taxpayer does not file a tax return within five months of the due date, the maximum amount penalty amount of 25 percent of the tax will apply.

Appellant's 2014 tax return was due on April 15, 2015. As appellant did not file a tax return within five months of the due date, FTB correctly applied a late-filing penalty of 25 percent of the tax due.⁹

Appellant has not shown that he had reasonable cause for failing to timely file a tax return. Accordingly, there is no basis to abate the penalty.

⁸ If anything, the evidence suggests that FTB's proposed assessment understates the amount of his taxable income. As noted previously, FTB's proposed assessment did not take into account \$4,498 of income received from UC Davis.

⁹ The untimely tax return provided by appellant on August 8, 2016, was not a valid tax return because it did not list any of appellant's income or provide sufficient information for FTB to calculate his tax liability. (See *Appeal of LaVonne A. Hodgson*, 2002-SBE-001, Feb. 6, 2002.) Even if it could be considered a valid return, it would not change the amount of the late-filing penalty because it was submitted more than a year after it was due. As a result, at the time the return was submitted, the penalty of 25 percent of the tax due had already accrued.

Interest

Section 19101 imposes interest on unpaid tax and penalties. Section 19104 provides limited circumstances in which interest may be abated. Appellant has not shown any error in FTB's imposition of interest or any basis for interest to be abated.

HOLDING

Appellant is liable for the tax, penalty and interest determined by FTB. Appellant has not shown that he is entitled to a refund.

DISPOSITION

FTB's action is sustained.

DocuSigned by:
Grant S. Thompson
FC572D5681AE41B...
Grant S. Thompson
Administrative Law Judge

We concur:

DocuSigned by:
Sara A. Hosey
6D3FE4A0CA514E7...
Sara A. Hosey
Administrative Law Judge

DocuSigned by:
Michael F. Geary
1A9B52EF88AC4G7...
Michael F. Geary
Administrative Law Judge