

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 18042834  
 )  
**KEITH W. BROWN** ) Date Issued: February 5, 2019  
 )  
 )  
 )  
 )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellant: Keith W. Brown  
For Respondent: Eric Yadao  
Natasha S. Page

K. GAST, Administrative Law Judge: Pursuant to California Revenue and Taxation Code section 19045,<sup>1</sup> Keith W. Brown (appellant) appeals an action by respondent Franchise Tax Board (FTB) in proposing the following two assessments: (1) tax of \$1,117 and a late-filing penalty of \$279.25, plus interest, for the 2013 tax year; and (2) tax of \$3,027 and a late-filing penalty of \$756.75, plus interest, for the 2014 tax year.

Administrative Law Judges Kenneth Gast, Jeffrey I. Margolis, and Daniel K. Cho appeared for the duly noticed oral hearing of this matter in Torrance, California, on December 12, 2018. Appellant did not appear at the hearing, despite having confirmed in writing that he would. FTB appeared and had no objection to the Office of Tax Appeals (OTA) deciding the matter based on the written record. Accordingly, we decide this matter based on the written record.

**ISSUES**

1. For the 2013 and 2014 tax years, has appellant established error in FTB’s proposed assessment of tax?

---

<sup>1</sup> Unless otherwise indicated, all statutory references are to sections of the California Revenue and Taxation Code for the tax years at issue.

2. For the 2013 and 2014 tax years, did FTB properly impose the late-filing penalty, and, if so, has appellant established reasonable cause to abate it?

### FACTUAL FINDINGS

1. Appellant did not file a 2013 or 2014 California resident income tax return.
2. Subsequently, through its filing enforcement program, FTB received information indicating appellant had earned sufficient wage income to require him to file tax returns for 2013 and 2014.
3. FTB then issued Notices of Proposed Assessment (NPAs) for the 2013 and 2014 tax years. FTB estimated appellant's 2013 and 2014 California adjusted gross income (AGI) to be \$41,020 and \$64,483, respectively, based on the Form W-2 wage income appellant's employer reported to the Internal Revenue Service (IRS) for those tax years.<sup>2</sup> After allowing a standard deduction and personal exemption credit, the NPAs proposed additional tax and a late-filing penalty, plus interest, in the amounts noted above for the 2013 and 2014 tax years.
4. Appellant timely protested the NPAs in two separate but identical letters. He did not state reasons for his position. Rather, he referred FTB to his then ongoing appeal for the 2011 tax year, before the Board of Equalization (BOE).<sup>3</sup> Appellant indicated that at his BOE oral hearing, he would state reasons for objecting to being taxed for all tax years.
5. Although appellant referred to arguments he had made in connection with the protest and appeal of his 2011 tax liability, he did not describe those arguments in connection with his 2013 and 2014 appeal, nor did he provide OTA with any documentation regarding those arguments. Nevertheless, FTB did produce a copy of a letter appellant sent to the BOE appealing from FTB's Notice of Action issued to him for 2011. In that letter, appellant claimed that:

---

<sup>2</sup> FTB produced copies of appellant's 2013 and 2014 IRS Wage and Income Transcripts which reveal the unreported wage income. The transcript for 2014 also reveals that appellant earned additional income, from gambling and cancellation of indebtedness, that was not taken into account in the FTB's NPAs. To our knowledge, FTB has not issued supplemental or revised NPAs proposing to tax that income, and that additional income is not at issue in this proceeding.

<sup>3</sup> The BOE is the predecessor agency to OTA. However, as of January 1, 2018, OTA became vested with all the duties, powers, and responsibilities of the BOE necessary or appropriate to conduct appeals hearings with respect to tax and fee programs that were previously the duties, powers, or responsibilities of the BOE. (See Gov. Code, § 15672.)

My protest is not based on your interpretation of your assessment. It is based on the fact you are taxing without representation. . . .

Some of the issues of my complaint are:

1. Medical mal-practice by one of your entities, “State Fund Insurance” 1983 Surgery.
2. Continuing neurological intrusion since 1983 Surgery.
3. Continuing human abuses of mischief and stalking me, my family, and friends because of my religious rank and practices.
4. Oppressing my life in many ways, personally, monetarily, and spiritually. That you turn your heads to [*sic*] because you don’t want the task of bringing wrongdoers to justice.

My position is unchanged. I continue to decline your expectations for me to pay taxes for a system of state agencies that fail my basic needs, and continue to fail many people is [*sic*] society that are just trying to do right and good.

6. The parties engaged in several back-and-forth communications in which FTB attempted to schedule an in-person oral protest hearing to discuss whether appellant had a filing requirement for the tax years at issue. FTB also requested that appellant provide documentation to support his position. Despite this, the parties never held an in-person protest hearing or otherwise discussed the NPAs. In the course of these communications, appellant provided FTB with purported 2013 and 2014 California resident income tax returns (Forms 540 2EZ) dated July 29, 2017. Those “returns” were essentially left blank, in that appellant did not report any income, gain, deduction, expense, or compute tax.
7. FTB affirmed its NPAs with Notices of Action. This timely appeal followed.

#### DISCUSSION

Issue 1 – For the 2013 and 2014 tax years, has appellant established error in FTB’s proposed assessment of tax?

Section 18501 requires every individual subject to the Personal Income Tax Law to make a return to FTB, “stating specifically the items of the individual’s gross income from all sources

and the deductions and credits allowable,” if the individual’s gross income or AGI exceeds certain thresholds.

Section 19087(a) provides that if any taxpayer fails to file a return, 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.” If FTB makes a tax assessment 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 Michael E. Myers*, 2001-SBE-001, May 31, 2001.)<sup>4</sup> Federal courts have held that the taxing agency need only introduce some evidence linking the taxpayer with the unreported income. (See, e.g., *Rapp v. Commissioner* (9th Cir. 1985) 774 F.2d 932, 935.) When a taxpayer fails to file a valid return, FTB’s use of income information from various sources to estimate a taxpayer’s taxable income is a reasonable and rational method of estimating taxable income. (See *Palmer v. Internal Revenue Service* (9th Cir. 1997) 116 F.3d 1309, 1313; *Appeals of R. and Sonja J. Tonsberg*, 85-SBE-034, Apr. 9, 1985.) Once the FTB has met its initial burden, the assessment is presumed correct and the taxpayer has the burden of proving it wrong. (*Todd v. McColgan, supra*; *Appeal of Michael E. Myers, supra*.)

Here, FTB estimated appellant’s income based on his Form W-2 information, as reflected on IRS Wage and Income Transcripts. FTB’s use of that information is reasonable and rational. That information reveals appellant’s California AGI was sufficient to require him to file returns for 2013 and 2014.<sup>5</sup> Therefore, we find that FTB has met its initial burden such that the proposed assessments are presumed correct and the burden shifts to appellant to prove error.

In his appeal letters, appellant offered no argument, much less credible evidence, demonstrating that FTB’s proposed assessments were incorrect. Rather, he simply referenced a prior year’s tax dispute in which he complained about “taxation without representation,” “medical malpractice,” “neurological intrusion,” and “oppress[ion of] my life in many ways.” These allegations have no relevance to the issues before OTA; they do not excuse appellant’s

---

<sup>4</sup> BOE precedential opinions are viewable at: <<http://www.boe.ca.gov/legal/legalopcont.htm>>.

<sup>5</sup> For the 2013 tax year, a single individual under age 65, with no dependents, such as appellant, realizing California AGI from all sources of \$12,562 was required to file a California nonresident income tax return. Because appellant’s estimated California AGI was \$41,020, he was required to file a 2013 return. Similarly, for the 2014 tax year, the California AGI filing status threshold was \$12,838 for single individuals under age 65, with no dependents. Because appellant’s estimated California AGI was \$64,483, he was also required to file a 2014 return.

failure to file or show error in the FTB’s proposed assessments. Further, appellant’s submission, in 2017, of essentially blank 2013 and 2014 California resident income tax returns, does not show FTB’s proposed assessments are erroneous.<sup>6</sup> Accordingly, appellant has failed to carry his burden of proof.

Issue 2 – For the 2013 and 2014 tax years, did FTB properly impose the late-filing penalty, and, if so, has appellant established reasonable cause to abate it?

Section 19131 imposes a penalty for the failure to file a return on or before the due date, unless it is shown that the late filing is due to reasonable cause and not due to willful neglect. (§ 19131(a).) The late-filing penalty is computed at 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. (*Ibid.*) Here, the late-filing penalty was properly computed and imposed for both tax years at issue.

To establish reasonable cause to abate the late-filing penalty, “the taxpayer must show that the failure to file timely returns occurred despite the exercise of ordinary business care and prudence, or that such 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.) The burden of proof is on the taxpayer to establish reasonable cause exists to support an abatement of the penalty. (*Ibid.*)

Appellant offers no argument or evidence showing he had reasonable cause for failing to file his returns. His arguments—about taxation without representation, neurological intrusion, and oppression—neither explain nor excuse his failure to file. Accordingly, we find no basis to abate the late-filing penalties for 2013 and 2014.

### HOLDINGS

1. For the 2013 and 2014 tax years, appellant has not established error in FTB’s proposed assessment of tax.
2. For the 2013 and 2014 tax years, FTB properly imposed the late-filing penalty, and appellant has not established reasonable cause to abate it.

---

<sup>6</sup> In addition, appellant’s untimely blank “returns” for 2013 and 2014 are not valid returns. (See *Appeal of LaVonne A. Hodgson*, 2002-SBE-001, Feb. 6, 2002 [concluding that “[r]eturns that do not contain sufficient data from which FTB can compute and assess the tax liability of a particular taxpayer, or that do not demonstrate an honest and genuine endeavor to satisfy the requirements of California’s tax law . . . are not valid returns”].)

DISPOSITION

FTB's action is sustained.<sup>7</sup>

DocuSigned by:  
*Kenneth Gast*  
FD75A3136CB34C2...  
Kenneth Gast  
Administrative Law Judge

We concur:

DocuSigned by:  
*Jeffrey I. Margolis*  
5E9822FBB1BA41B...  
Jeffrey I. Margolis  
Administrative Law Judge

DocuSigned by:  
*Daniel K. Cho*  
9CAF796C88DF4A5...  
Daniel K. Cho  
Administrative Law Judge

---

<sup>7</sup> Finally, appellant is advised that OTA has the statutory authority to impose a penalty of up to \$5,000 if it finds that an appeal before it has been instituted or maintained primarily for delay or that a taxpayer's position in the appeal is frivolous or groundless. (Section 19714; see also Cal. Code Regs., tit. 18, § 30217(a).) Although we do not impose that penalty in this proceeding, appellant's positions and conduct in this appeal suggest that such a penalty may be warranted in the future should he file another appeal with this office raising the same or similar issues.