

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
MARCIA A. BRADLEY

) OTA Case No. 18042733
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) Date Issued: October 16, 2019
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OPINION

Representing the Parties:

For Appellant: Marcia Ann Bradley

For Respondent: Robert Sarkisian, Graduate Student
Assistant

For Office of Tax Appeals: Sheriene Anne Ridenour, Tax Counsel IV

A. VASSIGH, Administrative Law Judge: Pursuant to California Revenue and Taxation Code (R&TC) section 19045, Marcia A. Bradley (appellant) appeals an action by the respondent Franchise Tax Board (FTB) proposing \$712 of additional tax, a late filing penalty of \$178, and applicable interest, for the 2015 tax year.

Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUES

1. Whether appellant has established error in the proposed assessment of additional tax.
2. Whether appellant has established that the late filing penalty should be abated.

FACTUAL FINDINGS

1. Appellant has not filed a 2015 California income tax return.
2. Through its Integrated Non-Filer Compliance (INC) Program, FTB obtained computer information reported on a federal Form 1099 from Fidelity Investments (Fidelity), as well as information from Savings Bank of Mendocino County (Mendocino Bank), indicating that appellant received income sufficient to trigger the 2015 filing requirement.

3. In response to FTB’s request that appellant file a 2015 return or explain why a return was not required, appellant stated that she supported herself in 2015 with social security benefits and her husband’s pension until his death, and that her total income for the 2015 tax year was \$56,817.41. Appellant indicated that her husband died in March 2015, that \$56,799.46 of her 2015 income was “death benefits” relating to her deceased husband’s retirement from AT&T, and questioned which portion, if any, was taxable.
4. FTB reviewed appellant’s reply and determined that appellant had a filing requirement for the 2015 tax year. FTB issued appellant a Notice of Proposed Assessment (NPA) dated June 26, 2017 showing an estimated income of \$36,798¹ and, after allowing a standard deduction of \$4,044, estimated taxable income of \$32,754. The NPA proposed a total tax of \$712, and a late filing penalty of \$178, plus interest.
5. After a review of appellant’s protest, FTB issued a Notice of Action affirming the NPA. This timely appeal followed.

DISCUSSION

Issue 1 – Whether appellant has established error in the proposed assessment of additional tax.

R&TC section 17041, subdivision (a), provides, in pertinent part, that tax shall be imposed upon the entire taxable income of every resident of California.² R&TC section 17071 incorporates Internal Revenue Code (IRC) section 61, which defines “gross income” as including “all income from whatever source derived” including interest, as well as annuities, pensions, and income from life insurance and endowment contracts. R&TC section 18501 requires every individual subject to the Personal Income Tax to make and file a return with FTB “stating specifically the items of the individual’s gross income from all sources and the deductions and credits allowable” R&TC section 19087, subdivision (a), provides:

If any taxpayer fails to file a return, or files a false or fraudulent return with intent to evade the tax, for any taxable year, the Franchise Tax Board, at any time, may require a return or an amended return under penalties of perjury or 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.

¹ This amount consists of \$18 in taxable interest, as reported by Mendocino Bank, and \$36,780 in a taxable distribution, as reported by Fidelity. Appellant does not contend that the \$18 in interest from Mendocino is not taxable income. As such, we will no longer address the \$18 in taxable interest, as reported by Mendocino Bank.

² Appellant does not dispute that she resided in California in 2015.

When 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) 2001 WL 37126924.) Federal courts have held that the taxing agency need only introduce some evidence linking the taxpayer with the unreported income before the presumption of correctness is established. (See *Rapp v. Commissioner* (9th Cir. 1985) 774 F.2d 932, 935.) Once FTB has met its initial burden, the assessment is presumed correct and the taxpayer has the burden of proving it to be erroneous. (*Todd v. McColgan, supra*, at p. 514; *Appeal of Michael E. Myers, supra*.) "A taxpayer is not in a good position to criticize respondent's estimate of his or her liability when he or she fails to file a required return and, in addition, subsequently refuses to submit information upon request." (*Appeals of Fred R. Dauberger et al.*, (82-SBE-082) 1982 WL 11759.)

Here, FTB obtained information indicating that appellant received income totaling \$36,798 in 2015. Based on this amount of income, appellant was required to file a tax return for the 2015 tax year. FTB's estimation of appellant's income based upon federal Forms 1099 information showing that appellant received income totaling \$36,798, is both reasonable and rational. (See *Todd v. McColgan, supra*, 89 Cal.App.2d at p. 514; *Rapp v. Commissioner, supra*, 774 F.2d at p. 935.) Appellant does not deny receiving the income, but rather contends that the \$36,780 from Fidelity was "death benefits" relating to her deceased husband's retirement from AT&T and, therefore, is not taxable. While it is unclear what appellant means by "death benefits," Fidelity reported the \$36,780 on federal Form 1099-R as a taxable distribution from "Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc." As discussed above, "gross income" includes "all income from whatever source derived" including annuities, pensions, and income from life insurance and endowment contracts. (R&TC, § 17071; IRC, § 61.) Appellant has provided no documentation establishing that the \$36,780 distribution from Fidelity is not taxable. As such, we find that the \$36,780 from Fidelity is taxable income.

Appellant argues that if she had filed a 2015 tax return, she would have claimed the filing status married filing jointly, and that her income would be less than what is required to file a 2015 joint tax return. However, a taxpayer is presumed to be eligible only for the single filing status until she files a tax return establishing that she meets the requirements for the married filing jointly status. The NPA indicates that although the proposed assessment is based on a single individual with no dependents, FTB "will revise any difference in filing status, additional

deductions, exemptions, or credits when you file your required tax return,” and “adjust the tax, penalties, and interest based on the actual tax shown on the return.” As such, appellant was on notice that she could possibly avoid the proposed assessment, as well as the late filing penalty, by filing a 2015 return using the married filing joint filing status. R&TC section 18521, subdivision (g), allows a surviving spouse to file jointly if the deceased spouse died during the tax year. Appellant was provided with multiple opportunities to file a 2015 tax return, but has not done so.

Since appellant has not filed a 2015 tax return, she has not established that she meets the requirements for the married filing jointly status. We hold that the presumption of correctness properly applies to FTB’s determination and appellant has not met the burden of demonstrating that FTB’s determination is erroneous.

Issue 2 – Whether appellant has established that the late filing penalty should be abated.

California imposes a penalty for the failure to file a return on or before the due date, unless it is shown that the failure is due to reasonable cause and not due to willful neglect. (R&TC, § 19131.) To establish reasonable cause, a 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) 1979 WL 4068.) Ignorance of a filing requirement does not excuse a taxpayer’s failure to file a tax return in a timely manner. (*Appeal of Diebold, Inc.* (83-SBE-002) 1983 WL 15389; *Appeal of J. Morris and Leila G. Forbes* (67-SBE-042) 1967 WL 1384.)

Appellant offers no evidence of reasonable cause. Appellant did not address the late filing penalty issue. As discussed above, appellant did not establish that she had no filing requirement for the 2015 tax year. Therefore, appellant has not met her burden of showing that her failure to file was due to reasonable cause and not due to willful neglect.

HOLDINGS

1. Appellant has failed to demonstrate any error in the proposed assessment of additional tax.
2. Appellant has failed to establish that the late filing penalty should be abated.

DISPOSITION

FTB's action is sustained.

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Amanda Vassigh
Administrative Law Judge

We concur:

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Sara A. Hosey
Administrative Law Judge

DocuSigned by:

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John O. Johnson
Administrative Law Judge