

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 19034393
LESLIE D. FORD)
) Date Issued: October 30, 2019
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OPINION

Representing the Parties:

For Appellant: Leslie D. Ford

For Respondent: Eric A. Yadao, Tax Counsel III

N. DANG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Leslie D. Ford (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s protests of two separate proposed tax assessments for the 2015 and 2016 tax years.

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

ISSUE

Are FTB’s proposed assessments for the 2015 and 2016 tax years entitled to a presumption of correctness, and if so, has appellant shown error in those assessments?

FACTUAL FINDINGS

1. Appellant filed “zero returns” (that is, returns containing all \$0 or blank entries) for the 2015 and 2016 tax years.
2. FTB treated appellant’s zero returns as invalid and issued to appellant a separate Notice of Proposed Assessment (NPA) for each of these years that included delinquent filing and demand penalties, plus applicable interest.
3. The liability stated in the NPAs was computed from the following information returns filed by third-party payors who reported various payments to appellant for the 2015 and

2016 tax years: (1) 1099-MISC forms showing non-employee compensation; (2) 1099-DIV forms showing taxable dividend income; (3) 1099-B forms showing proceeds received from the sale of stock; and (4) a 1099-R form showing a taxable distribution from a deferred compensation plan.

DISCUSSION

If any taxpayer fails to file a return for any taxable year, FTB may at any time make an estimate of the taxpayer's net income from any available information. (R&TC, § 19087.) When a taxpayer fails to file a valid return, and refuses to cooperate in the ascertainment of his or her income, FTB is given "great latitude" in estimating that income. (*Appeal of Bailey* (92-SBE-001) 1992 WL 44503.)¹ When FTB proposes to assess tax based on estimated income, FTB bears the initial burden of demonstrating that its proposed assessment is reasonable and rational. (*Appeal of Myers* (2001-SBE-001) 2001 WL 37126924.) Once FTB has introduced some evidence linking the taxpayer with the unreported income, its proposed assessment is presumed correct and the taxpayer bears the burden of proving error. (*Appeal of Myers, supra.*)

Appellant admits that appellant received the income stated on the information returns relied upon by FTB in making its proposed assessments. However, appellant argues that because FTB has not provided any evidence establishing that this income was taxable, FTB's proposed assessments lack the necessary evidentiary foundation for the presumption of correctness to attach.

Appellant's attempt to shift the burden to FTB to justify the tax is wholly unpersuasive. It bears repeating that for the presumption of correctness to attach, FTB need only introduce *some* evidence linking the taxpayer with the unreported income. (*Appeal of Bailey, supra; Appeals of Tonsberg* (85-SBE-034) 1985 WL 15812.) In that regard, it is well-established that the use of income information from various sources is a reasonable and rational method for estimating taxable income. (*Ibid.*) There is no requirement that FTB provide additional evidence demonstrating that any, or all, of the payments made to appellant were subject to tax. Thus, in this situation, FTB is entitled to the presumption that all the income received by appellant is taxable, and appellant bears the burden of proving otherwise. The justification for

¹ Precedential opinions of the State Board of Equalization that were adopted prior to January 1, 2018, are also precedential authority before the Office of Tax Appeals, unless a panel removes, in whole or in part, the precedential status of the opinion as part of a written opinion. (Cal. Code Regs., tit. 18, § 30504.)

placing the burden of proof upon the taxpayer is the “strong need of the government to accomplish swift collection of revenues and in order to encourage recordkeeping by taxpayers.” (*Carson v. U.S.* (5th Cir. 1977) 560 F.2d 693, 696.)

Regarding appellant’s reliance on Internal Revenue Code (IRC) section 6201(d)² and *Portillo v. Commissioner* (5th Cir. 1991) 932 F.2d 1128 (*Portillo*),³ we find these authorities to be unavailing here. California does not conform to IRC section 6201(d). Further, we decline to follow *Portillo*’s holding to the extent it conflicts with the above-referenced State Board of Equalization precedent.

Based on the foregoing, FTB’s proposed assessments are presumed to be correct, and the burden now shifts to appellant to demonstrate error.

Appellant has not provided any other cogent contentions or any evidence for our consideration. The failure of appellant to produce evidence that is plainly within appellant’s control (such as evidence concerning the nature of the income appellant received), gives rise to a presumption that such evidence would be unfavorable to appellant’s case. (*Appeal of Cookston* (83-SBE-048) 1983 WL 15434.) Accordingly, we conclude that appellant has failed to show error in FTB’s proposed assessments.

² IRC section 6201(d) allows taxpayers who cooperate with the Internal Revenue Service (IRS) in verifying the accuracy of any reasonably disputed item of income contained in an information return, to shift the burden to the IRS of providing additional evidence to support the assessment.

³ In *Portillo*, the court held that the use of an information return was insufficient to support a deficiency assessment where the taxpayer disputed the receipt of the income shown on that return, requiring the taxing agency to “substantiate the charge of unreported income by some other means” (*Portillo, supra* at p. 1134.)

HOLDING

FTB’s proposed assessments for the 2015 and 2016 tax years are presumed correct, and appellant has failed to establish error in those assessments.

DISPOSITION

FTB’s actions are sustained.

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Nguyen Dang
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Nguyen Dang
Administrative Law Judge

We concur:

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Alberto T. Rosas
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Alberto T. Rosas
Administrative Law Judge

DocuSigned by:
Linda C. Cheng
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Linda C. Cheng
Administrative Law Judge