

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
BRITTNEY D. GREER

) OTA Case No. 19044611
)
) Date Issued: November 19, 2019
)
)

OPINION

Representing the Parties:

For Appellant: Brittney D. Greer

For Respondent: Diane M. Deatherage, Specialist

N. DANG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Brittney D. Greer (appellant) appeals an action by respondent Franchise Tax Board (FTB), denying appellant’s protest of a proposed assessment for the 2016 tax year.

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

ISSUE

Whether FTB’s proposed assessment for the 2016 tax year is reasonable and rational, and if so, whether appellant has established error in that assessment.

FACTUAL FINDINGS

1. Appellant did not file a return for the 2016 tax year.
2. Based on third-party information returns indicating that appellant received \$109,829 in non-employee compensation from Wynn Builders, Inc. (Wynn) and \$720 in wages from Re+Active Physical Therapy and Wellness during the 2016 tax year, FTB issued to appellant a Notice of Proposed Assessment for \$7,210 additional tax, a \$1,802.50 delinquent filing penalty, plus applicable interest.

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. (*Appeals of Bailey* (92-SBE-001) 1992 WL 44503.) 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. (*Ibid.*) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of Scanlon*, 2018-OTA-075P.)¹

Here, appellant's tax liability was computed based on third-party information returns. It is well established that the use of income information from various sources is a reasonable and rational method for estimating taxable income. (*Appeals of Bailey, supra; Appeals of Tonsberg* (85-SBE-034) 1985 WL 15812.) Therefore, the burden now shifts to appellant to demonstrate error.

Appellant argues that she was the victim of identity theft, and that appellant did not work for or receive any income from Wynn during the 2016 tax year. However, appellant failed to provide any evidence to support her claim that she was the victim of identity theft, or that the information return filed by Wynn was erroneous. Based on the foregoing, we find that appellant has not met her burden of establishing error in FTB's assessment.


¹ Office of Tax Appeals' (OTA's) opinions are viewable on OTA's website at: <www.ota.ca.gov/opinions>.

HOLDING


FTB’s proposed assessment for the 2016 tax year is reasonable and rational, and appellant has not established error in that assessment.


DISPOSITION

FTB’s action is sustained.

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Nguyen Dang
Administrative Law Judge

We concur:

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Elliott Scott Ewing
Administrative Law Judge

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Teresa A. Stanley
Administrative Law Judge