

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
K. BLINKINSOPH

) OTA Case No. 19024276
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OPINION

Representing the Parties:

For Appellant: K. Blinkinsoph

For Respondent: David Kowalczyk, Tax Counsel

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, K. Blinkinsoph (appellant) appeals an action by the respondent Franchise Tax Board (FTB) proposing \$5,548 of additional tax, a late-filing penalty of \$1,387, and applicable interest, for the 2014 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 demonstrated error in FTB’s proposed assessment of tax.
2. Whether appellant has shown reasonable cause for the late filing of a return.

FACTUAL FINDINGS

1. Appellant had not filed a 2014 California income tax return until filing an individual return dated March 8, 2019, reporting zero taxable income.
2. Through its Integrated Non-Filer Compliance Program, FTB obtained computer information from the Internal Revenue Service (IRS), as set forth on a federal Form 1098 from F&M Bank of Long Beach (F&M Bank), that appellant paid mortgage interest for

- the 2014 tax year in the amount of \$17,506, which indicated income sufficient to trigger the 2014 filing requirement.¹
3. For the 2015 tax year, FTB estimated appellant's income to be \$105,096 by multiplying the amount of reported mortgage interest paid (\$17,056) by six. FTB states that it calculated this ratio based on a study of millions of returns.
 4. FTB issued a notice dated June 29, 2017, requesting that appellant file a return or explain why no return was required.
 5. On July 17, 2017, appellant responded to FTB's request for a return. Appellant stated that his income did not reach the minimum threshold to file a federal or state tax return in 2014.
 6. In a letter dated November 29, 2017, appellant reiterated the position that he did not have sufficient income to trigger the filing requirement. Appellant stated that he retired in 2001 and paid his living expenses with his retirement savings. Appellant also stated that he paid the mortgage interest, which F&M Bank reported to the IRS, with funds from his retirement savings.
 7. On September 24, 2018, FTB issued a Notice of Proposed Assessment (NPA), based on the information received from F&M Bank and appellant's estimated income from the reported mortgage interest paid.
 8. Appellant filed a timely protest with FTB, asserting that he did not receive sufficient income in 2014 to trigger the tax return filing requirement. Appellant reasserted that the mortgage interest in question was paid by a combination of loan proceeds and personal savings.
 9. On November 19, 2018, FTB sent appellant a letter requesting additional information to verify the funding sources and amounts to meet appellant's mortgage obligation and other living expenses during the 2014 tax year. Specifically, FTB requested that appellant provide: (1) a 2014 federal income tax return and applicable schedules; (2) bank statements for January, June, and December 2014; and (3) documentation regarding any applicable non-taxable income benefits received. The letter indicated that if FTB did not

¹ For the 2014 tax year, the minimum California adjusted gross income (AGI) filing threshold amount for a single filer with no dependents was \$12,838.

receive the requested documentation within 30 days of the letter, it would issue a Notice of Action (NOA) affirming the NPA.

10. In a letter dated December 8, 2018, appellant asserted that his income did not reach the level required to trigger the federal income tax return filing requirement. Appellant provided bank savings account statements for the following periods: January 1, 2014, through February 28, 2014; April 1, 2014, through June 30, 2014; and December 1, 2014, through December 31, 2014.²
11. As FTB’s records showed that appellant failed to provide the requested documentation, FTB issued an NOA dated January 4, 2019, affirming the NPA. This timely appeal followed.

DISCUSSION

Issue 1: Whether appellant has demonstrated error in FTB’s proposed assessment of tax.

R&TC section 17041 imposes a tax “upon the entire taxable income of every resident of this state . . .” and upon the entire taxable income of every nonresident or part-year resident which is derived from sources in this state. R&TC section 18501 requires every individual subject to the Personal Income Tax Law 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(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.

When FTB makes a proposed assessment based on an estimate of income, FTB’s initial burden is to show why its proposed tax assessment is reasonable and rational. (*Appeal of Myers* (2001-SBE-001) 2001 WL 37126924.) When a taxpayer fails to file a valid return and refuses to

² It appears that appellant provided incomplete bank statements to FTB. During this appeal, FTB provided copies of the bank statements that appellant had produced. Each bank statement is missing one or more pages. Specifically, appellant’s bank statement for the period January 1, 2014, through February 28, 2014, is missing page 4; appellant’s bank statement for the period April 1, 2014, through June 30, 2014, is missing pages 3 through 6; and appellant’s bank statement for December 1, 2014, through December 31, 2014, is missing page 1. Additionally, it appears that the transaction history for the periods April 1, 2014, through June 30, 2014, are incomplete. On appeal, appellant also provided incomplete copies of his bank statements.

cooperate in the ascertainment of his or her income, FTB is given “great latitude” in estimating income. (*Appeals of Bailey* (92-SBE-001) 1992 WL 44503 [estimate based on third-party information reporting]; *Appeals of Tonsberg* (85-SBE-034) 1985 WL 15812 [use of third-party information reporting].) “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 Dauberger, et al.* (82-SBE-082) 1982 WL 11759.)

Federal courts have held that the taxing agency need only introduce some evidence linking the taxpayer with the unreported income. (See *Rapp v. Commissioner* (9th Cir. 1985) 774 F.2d 932, 935 (*Rapp*).) In *Rapp*, the Ninth Circuit Court of Appeals stated, “[o]nce the Government has carried its initial burden of introducing some evidence linking the taxpayer with income-producing activity, the burden shifts to the taxpayer to rebut the presumption by establishing by a preponderance of the evidence that the deficiency determination is arbitrary or erroneous.” (*Ibid.*, citations omitted.) Essentially, after FTB satisfies its initial burden, its determination is presumed correct and the taxpayer has the burden of proving it wrong. (*Todd v. McColgan* (1949) 89 Ca.App.2d 509.) A taxpayer’s failure to produce evidence that is within his or her control gives rise to a presumption that such evidence is unfavorable to his or her case. (*Appeal of Cookston* (83-SBE048) 1983 WL 15434.) Unsupported assertions are not sufficient to satisfy a taxpayer’s burden of proof. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.)

Here, FTB reconstructed appellant’s income based on the information reported on IRS Forms 1098 regarding appellant’s mortgage interest for the tax year at issue. This qualifies as “some” evidence linking appellant with an income-producing activity. Additionally, FTB’s use of income information from third parties to estimate appellant’s taxable income when appellant failed to file a 2014 California return is a reasonable rational method of estimating taxable income. (See *Appeals of Bailey, supra*; *Appeals Tonsberg, supra*.) Therefore, the burden shifts to appellant to establish error in FTB’s proposed assessment.

Appellant asserts that he did not receive taxable income in 2014. Instead, appellant argues that he paid mortgage interest to F&M Bank with funds from personal savings and proceeds from the same mortgage for which interest was paid. In support, appellant provided partial bank statements for the following periods: January 1, 2014, through February 28, 2014;

April 1, 2014, through June 30, 2014; and December 1, 2014, through December 31, 2014.³

According to appellant's bank statements, appellant deposited \$493,522.69 into his savings bank account on February 14, 2014. However, appellant has not provided any documentation to show the source and nontaxable nature of this \$493,522.69 deposit.

Appellant asserts, without evidence, that the \$493,522.69 deposit was the result of loan proceeds from a mortgage on his home. Appellant also argues that the mortgage was a “no document” loan, meaning that the loan was based solely on the value of his home, and that he was not required to provide income documentation to the bank. However, appellant did not provide any mortgage documents. Appellant's bank statements also do not show the source of the \$493,522.69. Instead, the bank statement merely indicates that appellant made a deposit. As a result, we cannot determine whether the \$493,522.69 was obtained through a mortgage or some other nontaxable source.

Appellant's savings account bank statements also do not show any mortgage interest payments made from that bank account. Instead, the bank statements show a withdrawal of \$30,000 on February 18, 2014, and a wire transfer (including fees) to a Marquee Trust Funding account of \$160,030 on May 29, 2014. We note that appellant did not provide a complete bank statement for April 1, 2014, through June 30, 2014. Based on the ending account balance for that period, appellant made \$50,000 in withdrawals which are not accounted for in the pages that appellant provided for that period. As such, we cannot determine whether appellant made payments of mortgage interest from this account during the period April 1, 2014, through June 30, 2014. Consequently, we find that appellant's assertions are not supported by the available evidence. Appellant's unsupported assertions are not sufficient to overcome the presumption of correctness that applies to FTB's deficiency. (*Welch v. Helvering* (1933) 290 U.S. 111, 115.) Accordingly, we find that appellant has not met the burden of proving error in FTB's proposed assessment.

³ As discussed above, appellant previously provided partial bank statements to FTB for these same periods. See footnote 2. For this appeal, appellant provided incomplete bank statements for the periods January 1, 2014, through February 28, 2014, and December 1, 2014, through December 31, 2014. However, even though appellant's submission is missing pages, the statement account transaction history for those statement periods appears to be complete.

Issue 2: Whether appellant has shown reasonable cause for the late filing of the return.

California imposes a penalty for failure to file a return by its due date, unless the failure to file was due to reasonable cause and not due to willful neglect. (R&TC, § 19131.) The late-filing penalty is computed at 5 percent of the tax due, after allowing for timely payments, for every month elapsing from the due date of the return (without regard to any extension) to the filing date, up to a maximum of 25 percent. (R&TC, § 19131.)

The burden is on the taxpayer to prove that reasonable cause prevented the taxpayer from timely filing the return. (*Todd v. McColgan, supra; Appeal of Beadling (77-SBE-021) 1977 WL 3831.*) 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 Tons (79-SBE-027) 1979 WL 4068.*) Unsupported assertions are not sufficient to satisfy a taxpayer’s burden of proof. (*Appeal of Magidow, supra.*)

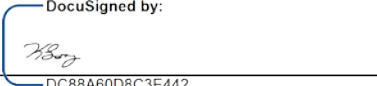
Appellant’s 2014 return was due on April 15, 2015, but appellant’s return (reporting zero taxable income) was not received by FTB until March 8, 2019. Appellant has not made any arguments with respect to the late-filing penalty. Additionally, as discussed above, appellant has not substantiated his argument that he did not have sufficient income to file a return for the 2014 tax year. Accordingly, we find no basis to relieve the penalty.

HOLDINGS

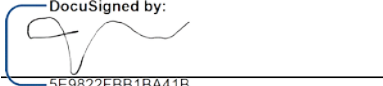
1. Appellant has not demonstrated error in FTB’s proposed assessment.
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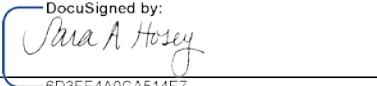
DISPOSITION

FTB’s action is sustained.

DocuSigned by:

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Keith T. Long
 Administrative Law Judge

We concur:

DocuSigned by:

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Jeffrey I. Margolis
 Administrative Law Judge

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Sara A. Hosey
 Administrative Law Judge

Date Issued: 4/13/2020