

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

R. BRANTNER

) OTA Case No. 19034555
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OPINION

Representing the Parties:

For Appellant:

R. Brantner

For Respondent:

Eric R. Brown, Tax Counsel III

S. RIDENOUR, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, R. Brantner (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing \$5,464 of additional tax, a late-filing penalty of \$1,366, and applicable interest, for the 2013 tax year.

Appellant waived his 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 additional tax.
2. Whether appellant has established that he is entitled to equitable relief.
3. Whether appellant has shown reasonable cause for failing to timely file his 2013 tax return.

FACTUAL FINDINGS

1. Appellant has not filed a 2013 California income tax return.
2. For the 2013 tax year, a single individual under age 65 with no dependents realizing a California gross income of \$15,702 or a California adjusted gross income of \$12,562 was required to file a California income tax return.
3. Through its Integrated Non-Filer Compliance Program, FTB obtained computer information indicating that appellant received income sufficient to trigger the 2013 filing requirement. Specifically, FTB received information reported on federal Forms 1099-R (“Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.”) from Charles Schwab & Co, Inc. (Charles Schwab) indicating that appellant received distributions totaling \$90,000 in 2013.
4. FTB issued appellant a notice requesting that he file a return or explain why no return was required. When appellant neither filed a return, nor supplied information showing that he did not have a filing requirement, FTB issued a timely Notice of Proposed Assessment (NPA).¹ The NPA estimated total income based on the Charles Schwab distribution and, after allowing a standard deduction and personal exemption credit, estimated taxable income. The NPA proposed tax of \$5,464 and a late-filing penalty of \$1,366, plus interest.
5. Appellant filed a protest with FTB, asserting that he did not have a filing requirement for the 2013 tax year. After a review of appellant’s protest, FTB issued a Notice of Action (NOA) affirming the NPA.
6. This timely appeal followed.

¹ R&TC section 19057 requires FTB to mail a proposed assessment to taxpayers within four years after the filing date of the taxpayer’s return. However, if a taxpayer fails to file a return for any taxable year, FTB *at any time* may propose to assess the amount of tax, interest, and penalties due. (R&TC, § 19087(a).)

DISCUSSION

Issue 1. Whether appellant has demonstrated error in FTB's proposed assessment of additional tax.

R&TC section 17041(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. If a taxpayer fails to file a return, FTB may make an estimate of the taxpayer's net income, from any available information, and may propose to assess the amount of tax, interest, and penalties due. (R&TC, § 19087(a).)

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 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 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 Dauberger, et al.* (82-SBE-082) 1982 WL 11759.)

Here, FTB obtained information indicating that appellant received distributions from Charles Schwab totaling \$90,000 in 2013. Based on this amount of distribution income, appellant was required to file a tax return for the 2013 tax year. FTB's estimation of appellant's income based upon federal Forms 1099-R information showing that appellant received income totaling \$90,000, is both reasonable and rational. (See *Todd v. McColgan, supra*, 89 Cal.App.2d

² Appellant does not dispute that he resided in California in 2013.

at p. 514; *Rapp v. Commissioner*, *supra*, 774 F.2d at p. 935.) Appellant does not deny receiving the \$90,000 from Charles Schwab, but rather contends he is disabled and supports himself on separately received tax-exempt disability income. However, FTB’s estimation of appellant’s income did not include such disability payments; rather, FTB’s assessment is based solely on the \$90,000 in total taxable distributions reported by Charles Schwab on federal Forms 1099-R that appellant received in 2013. 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 distributions totaling \$90,000 from Charles Schwab are not taxable. As such, we find that the \$90,000 from Charles Schwab is taxable income.

Appellant argues that if he had filed a 2013 tax return, he would have claimed itemized deductions, rather than the standard deduction, and that his deductions would “exceed alleged income.” It appears that appellant argues that if he filed a 2013 return and claimed itemized deductions, that his 2013 taxable income would be less than what is required to file a tax return. R&TC section 18501 imposes a California tax return filing requirement based on an individual’s California gross income or California adjusted gross income, which for the 2013 tax year was at least \$15,702 and \$12,562, respectively. An individual’s California gross income and California adjusted gross income are both calculated before a taxpayer claims deductions. It is after deductions are claimed that the individual’s taxable income is calculated. An individual’s taxable income has no bearing on determining whether an individual has a tax return filing requirement; rather, the amount is used to determine the individual’s tax liability.

Furthermore, income tax deductions are a matter of legislative grace and a taxpayer who claims a deduction has the burden of proving by evidence that he or she is entitled to that deduction. (See *New Colonial Ice Co. v. Helvering* (1934) 292 U.S. 435; *Appeal of Myers*, *supra*.) A taxpayer is presumed to be eligible only for the standard deduction until the taxpayer files a tax return and establishes that he or she is entitled to the claimed deductions. The NPA indicates that although the proposed assessment is based on a single individual with no dependents and the standard deduction, 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.”³ As such, appellant was on notice that he could possibly avoid the proposed assessment by filing a 2013 return. Appellant was provided with opportunities to file a 2013 tax return, but has not done so. Since appellant has not filed a 2013 tax return, he has not established that he is entitled to claim itemized deductions.⁴

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 he is entitled to equitable relief.

Appellant contends that he is entitled to equitable relief. Appellant asserts that since 2004, he has informed FTB that he does not have a filing requirement, which FTB accepted and upon which appellant, under the “Taxpayer Bill of Rights,” detrimentally relied on for the 2013 tax year. To support his assertion, appellant provides confirmation letters FTB sent appellant for the 2006 and 2014⁵ tax years, acknowledging appellant responding to FTB’s request to file a tax return for the respective tax year, and that based on information appellant provided, FTB would take no further action at that time. Appellant asserts that FTB’s assessment is barred by both laches and equitable estoppel.

Laches is an equitable defense developed by courts “to protect defendants against ‘unreasonable, prejudicial delay in commencing suit.’” (*SCA Hygiene Products Aktiebolag v. First Quality Baby Products, LLC* (2017) ___ U.S. ___ [137 S.Ct. 954, 960], citing *Petrella v. Metro-Goldwyn-Mayer, Inc.* (2014) 572 U.S. 663, 667.) In general, laches is defined as the neglect or failure of a plaintiff to assert a right for such a period of time that results in prejudice to defendant requiring that the plaintiff’s cause of action be barred in equity. (*Appeal of*

³ Appellant argues that he requested a protest hearing with his letter protesting the NPA, and that FTB issued the NOA without holding the requested hearing. While it is unclear if appellant is making a due process claim, we note that “due process is satisfied with respect to tax matters so long as an opportunity is given to question the validity of a tax at some stage of the proceedings.” (*Appeals of Bailey* (92-SBE-001) 1992 WL 44503.) Even if appellant did not receive due process during FTB’s protest process, he has received due process during this appeal.

⁴ Appellant asserts that, because of the December 2017 Thomas Fire in Ventura and Santa Barbara Counties, he lost everything, including documentation substantiating any deductions he would have claimed had he filed a 2013 return. As appellant has not filed a 2013 tax return, we do not need to address whether appellant has proven by evidence that he is entitled to any claimed deductions and what impact, if any, the fire has on appellant’s burden of proof.

⁵ We note that while the 2014 tax year is after the tax year on appeal, the 2014 confirmation letter was issued before the 2013 NPA.

Renshaw (86-SBE-191) 1986 WL 22873.) Whether any delay by a plaintiff in bringing an action was unreasonable is a question of fact. (*Id.*) It appears that appellant argues that he was prejudiced as a result of the lapse in time between 2004 (when appellant first informed FTB that he does not have a filing requirement) and FTB's issuance of the 2013 NPA. However, we find that there is no showing of unreasonable or prejudicial delay in the issuance of the 2013 NPA. As discussed above, the 2013 NPA was timely issued and, therefore, no statute of limitations was violated. Furthermore, the Ninth Circuit has stated that "laches is not a defense to the [government's] enforcement of tax claims." (*Dial v. Commissioner* (9th Cir. 1992) 968 F.2d 898, 904.) We find that FTB's assessment is not barred by the doctrine of laches.

Equitable estoppel may be raised as a defense against the government only in rare and unusual circumstances and when its application is necessary to prevent manifest injustice. (See *Appeal of Smith* (91-SBE-005) 1991 WL 280345.) The four elements of equitable estoppel are: (1) the government agency must be shown to have been aware of the actual facts; (2) the government agency must be shown to have made an incorrect or inaccurate representation to the relying party and intended that its incorrect or inaccurate representation would be acted upon by the relying party or have acted in such a way that the relying party had a right to believe that the representation was so intended; (3) the relying party must be shown to have been ignorant of the actual facts; and (4) the relying party must be shown to have detrimentally relied upon the representations or conduct of the government agency. (*Appeal of Western Colorprint* (78-SBE-071) 1978 WL 3544.) Where one of these elements is missing, there can be no estoppel. (*Hersch v. Citizens Savings & Loan Assn.* (1983) 146 Cal.App.3d 1002, 1011.) The burden of proving estoppel is on the party asserting estoppel. (*Appeal of Campbell* (79-SBE-035) 1979 WL 4076.)

Appellant has not shown that all of the elements of the doctrine of equitable estoppel are satisfied in the present situation. Appellant has provided no evidence indicating that FTB was aware he received income, other than disability payments, sufficient to trigger a filing requirement during the tax years FTB determined it would take no further action at that time, such that appellant detrimentally relied upon FTB's representation when he did not file a 2013 return. Nevertheless, even if appellant had provided such documentation for the other tax years, it is well established that each tax year must be examined individually and considered on its own merits. (See *Appeal of Laude* (76-SBE-096) 1976 WL 4112; see also R&TC, §§ 19801, 19802.)

Appellant has not shown that FTB made an incorrect or an inaccurate representation to him regarding his 2013 tax liability. Furthermore, detrimental reliance is present only where FTB's action causes the taxpayer to take action that leads to an increased tax liability. (*Appeal of Lopert* (82-SBE-011) 1982 WL 11689.) If the taxpayer would have the same tax liability in spite of the alleged action of FTB, then equitable estoppel does not apply. As discussed above, the \$90,000 distribution appellant received from Charles Schwab during the 2013 tax year is taxable income, and appellant has a 2013 tax liability. We find that the confirmation letters FTB sent appellant for other tax years did not cause appellant to take action that lead to an increase of his 2013 tax liability. Rather, appellant would have the same 2013 tax liability in spite of the alleged action of FTB. We find that FTB's assessment is not barred by equitable estoppel.

Based on the foregoing, we hold that that equitable relief is not applicable in this matter.

Issue 3. Whether appellant has shown reasonable cause for failing to timely file his 2013 tax return.

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 a timely return occurred despite the exercise of ordinary business care and prudence, or that cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of 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 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 he had no filing requirement for the 2013 tax year. Therefore, appellant has not met his burden of showing that his failure to file was due to reasonable cause and not due to willful neglect.

HOLDINGS

1. Appellant has not demonstrated error in FTB's proposed assessment of additional tax.
2. Appellant has not established that he is entitled to equitable relief.
3. Appellant has not shown reasonable cause for failing to timely file his 2013 tax return.

DISPOSITION

FTB's action is sustained.

DocuSigned by:
Sheriene Anne Ridenour
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Sheriene Anne Ridenour
Administrative Law Judge

We concur:

DocuSigned by:
Kenneth Gast
ED75A3136CB34C2
Kenneth Gast
Administrative Law Judge

DocuSigned by:
Andrew Wong
8A4294817A67463
Andrew Wong
Administrative Law Judge

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