

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:

A. LO

) OTA Case No. 20066246
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OPINION

Representing the Parties:

For Appellant:

A. Lo

For Respondent:

Jean M. Cramer, Tax Counsel IV

S. RIDENOUR, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, A. Lo (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing tax of \$2,018, a late-filing penalty of \$504.50, and applicable interest, for the 2017 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 FTB’s proposed assessment for the 2017 tax year, which is based on information received from its Integrated Non-Filer Compliance (INC) Program.
2. Whether appellant has established reasonable cause for failing to timely file a return for the 2017 tax year.

FACTUAL FINDINGS

1. Appellant has not filed a 2017 California resident income tax return.
2. Through its INC Program, FTB obtained computer information indicating that appellant received income sufficient to trigger a 2017 return filing requirement. Specifically, FTB received information reported on federal Form W-2 (Wage and Tax Statement) from

Premier Healthcare Services, LLC (Premier Healthcare) indicating appellant received \$61,991 in wages, and information reported on 1099-B (Proceeds from Broker and Barter Exchange Transactions) from Scottrade, Inc. (Scottrade) indicating appellant received \$2,451 in net proceeds.

3. On September 17, 2019, FTB issued a Request for Tax Return (Request) requiring appellant to file a 2017 tax return, send a copy of the tax return if one already had been filed, or explain why appellant was not required to file a tax return by October 23, 2019. The Request was sent to appellant at the current address of record in Aurora, Colorado.
4. When appellant failed to timely reply to the Request, FTB issued appellant a Notice of Proposed Assessment (NPA) on November 26, 2019, which estimated total income of \$64,442, based on the information received from FTB's INC Program. The NPA proposed tax of \$2,018 and a late-filing penalty of \$504.50, plus interest.
5. Appellant filed a protest with FTB by submitting a Quick Resolution Worksheet (Worksheet),¹ on which appellant indicated "none" for appellant's social security number or Individual Taxpayer Identification Number. Appellant included with the Worksheet a self-prepared California Form 3525 (Substitute for Form W-2, Wage and Tax Statement). On the form, appellant listed zero for wages and other compensation, but reported state income tax and state disability insurance withheld.
6. After reviewing the information appellant provided, FTB issued a Notice of Action affirming the NPA. This timely appeal followed.
7. On appeal, FTB provides: (1) appellant's 2017 federal Wages and Income Transcript indicating appellant's social security number, appellant's address as Toluca Lake, California, and appellant's Form W-2 income and Form 1099-B proceeds; and (2) a printout of information obtained from the California Department of Motor Vehicles (DMV) indicating appellant held a valid California driver's license as of 2012, with an expiration date in 2023, appellant's "oth[er]" address was in Los Angeles, California, as

¹ It appears appellant handwrote on the Worksheet, "see attached detailed letter" and "not valid without the attached letter and all exhibits." However, the record does not include any letter (or exhibits) that may have been attached to appellant's Worksheet that was provided to FTB at protest; instead, the record simply includes the Worksheet itself, which was provided on appeal by FTB as part of its exhibits. Since appellant has been afforded an opportunity to be heard on appeal and file briefs and exhibits to support appellant's position, but has not provided any letter or exhibits referenced on the Worksheet, we can only conclude they are not relevant to this appeal.

of November 1, 2016, and appellant’s “res[idence]” address was in Toluca Lake, California, as of November 28, 2017.²

8. Appellant was given an opportunity to respond to FTB’s brief but did not to do so.

DISCUSSION

Issue 1: Whether appellant has established error in FTB’s proposed assessment for the 2017 tax year, which is based on information received from its INC Program.

R&TC section 17041(a) provides, in pertinent part, that tax shall be imposed upon the entire taxable income of every resident of California.³ 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 dividends, annuities, and gains derived from dealings in property. 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 [FTB’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.)

² The DMV information also states that appellant’s California driver’s license, which was originally issued in 2012 and valid until 2023, was eventually surrendered by appellant to Colorado.

³ Appellant does not dispute being a resident of California during 2017.

Here, FTB obtained information indicating that appellant received wages from Premier Healthcare totaling \$61,991 and net proceeds of \$2,451 from Scottrade in 2017. Based on this amount of income, appellant was required to file a tax return for the 2017 tax year.⁴ FTB's estimation of appellant's income based upon federal Forms W-2 and 1099-B information showing that appellant received income totaling \$64,442 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.) Indeed, appellant does not deny receiving the \$61,991 from Premier Healthcare nor the \$2,451 from Scottrade.

On appeal, appellant provides no evidence or argument purporting to establish error in FTB's proposed assessment. Rather, in the appeal letter, appellant asks (perhaps rhetorically) whether appellant has "broken any law," and if so, which law, and seeks confirmation that appellant is "addressing a tax professional," and requests the person's professional license number. After FTB filed its brief, the Office of Tax Appeals (OTA) provided appellant an opportunity to file a reply brief, but appellant did not do so. As appellant did not submit any evidence or argument that may help meet the burden of proof, appellant has not established error in FTB's proposed assessment.

Accordingly, 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 reasonable cause for failing to timely file a return for the 2017 tax year.

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 GEF Operating, Inc.*, 2020-OTA-057A.) Ignorance of a filing requirement does not excuse a taxpayer's failure to file a tax return in a timely manner.

⁴ A California resident who was a single individual under 65 years old, with no dependents, such as appellant, has a California filing requirement for the 2017 tax year if the individual's California gross income exceeds \$17,029 or the individual's California adjusted gross income exceeds \$13,623.

(Ibid.)


As concluded above, appellant was required to file a return for the 2017 tax year; therefore, the imposition of the late-filing penalty was proper. Appellant does not address the late-filing penalty and offers no evidence of reasonable cause to abate it. Therefore, appellant has not met the burden of showing that the failure to file was due to reasonable cause and not due to willful neglect.

HOLDINGS

1. Appellant has not established error in FTB’s proposed assessment for the 2017 tax year, which is based on information received from its INC Program.
2. Appellant has not established reasonable cause for failing to timely file a return for the 2017 tax year.

DISPOSITION

FTB’s action is sustained.⁵

DocuSigned by:

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 Sheriene Anne Ridenour
 Administrative Law Judge

We concur:

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 Elliott Scott Ewing
 Administrative Law Judge

DocuSigned by:

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 Tommy Leung
 Administrative Law Judge

Date Issued: 2/2/2021

⁵ OTA has the statutory authority to impose a penalty of up to \$5,000 if it finds that an appeal before it has been instituted or maintained primarily for delay or that a taxpayer’s position in the appeal is frivolous or groundless. (R&TC, § 19714; see also Cal. Code Regs., tit. 18, § 30217(a).) Although we do not impose that penalty in this proceeding, appellant’s positions and conduct in this appeal suggest that such a penalty may be warranted in the future should appellant file another appeal with OTA raising the same or similar issues.