

2. FTB issued a Notice of Proposed Assessment (NPA) for 2015 on October 1, 2019, which estimated taxable income of \$56,062, and proposed to assess tax of \$2,585, a late filing penalty of \$646.25, plus interest. Appellant timely protested the NPA.
3. FTB issued a Notice of Action on August 28, 2020, which affirmed the NPA.
4. This timely appeal followed.

DISCUSSION

Issue 1: Whether appellant has established error in FTB's proposed assessment of tax.

California residents are taxed upon their entire taxable income (regardless of source), while nonresidents are only taxed on income from California sources. (R&TC, §§ 17041(a), (b), & (i), 17951.) R&TC section 18501 requires that every individual subject to the Personal Income Tax Law, whose gross income from all sources exceeds certain filing thresholds, 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, § 18501(a)(1)-(4).) R&TC section 19087(a) provides that if any taxpayer fails to file a return, FTB at any time “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.”

If FTB proposes a tax assessment based on an estimate of income, its initial burden is to show why its assessment is reasonable and rational. (*Appeal of Bindley*, 2019-OTA-179P.) The taxing agency need only introduce some minimal factual foundation to support the assessment. (*Ibid.*) When a taxpayer fails to file a valid return, FTB’s use of income information from various sources is a reasonable and rational method of estimating taxable income. (See *Palmer v. Internal Revenue Service* (9th Cir. 1997) 116 F.3d 1309, 1313.) Once FTB has met its initial burden, its determination is presumed correct, and the taxpayer has the burden of proving it is wrong. (*Appeal of Bindley, supra.*) In the absence of credible, competent, and relevant evidence showing error in the FTB’s determination, the determination must be upheld. (*Ibid.*)

Here, appellant failed to file a California income tax return. However, appellant reported a California address on her federal income tax return. In addition, appellant reported federal adjusted gross income of \$60,106 and taxable income of \$49,063 on the federal return. Based on this information, FTB estimated appellant’s California income and determined that appellant had a California filing requirement. We find that FTB has met its minimal factual foundation to

support the proposed assessment of tax and that its determination is reasonable and rational. Therefore, FTB has met its initial burden such that its proposed assessment is presumed correct, and the burden shifts to appellant to show error in the assessment.

Appellant asserts that she was a nonresident of California and was supporting a sick family member and was not aware of FTB's notices until she returned to California. Appellant provides no evidence to show that she was a nonresident and that FTB's estimate of income includes only non-California source income. Appellant also asserts that she filed a California income tax return; however, appellant filed a 2017 tax return, which is for a year not at issue in this appeal. Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) Therefore, appellant fails to establish error in FTB's proposed assessment.

Issue 2: Whether the late filing penalty should be abated.

California imposes a penalty for failing to file a valid return on or before the due date, unless the taxpayer shows that the failure is due to reasonable cause and not due to willful neglect. (R&TC, § 19131.) To establish reasonable cause, the taxpayer must show that the failure to file a timely return occurred despite the exercise of ordinary business care and prudence, or that such cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) Appellant asserts that she does not have a California filing requirement. In addition, appellant asserts that she filed a return in response to FTB's notice. However, as stated above, appellant filed a return for a year not at issue. In addition, we are examining whether appellant has reasonable cause for failing to file at the due date for filing a return, and not whether appellant timely filed a return after the due date in response to FTB's notification that a return is required. Accordingly, appellant has not shown reasonable cause for failing to timely file and the penalty is not abated.


Finally, appellant states that she wants to enter into a payment plan. Once the decision in this appeal becomes final, appellant may contact FTB to determine whether she is eligible to participate in the Offer in Compromise program or whether she can enter into an installment payment agreement with FTB. OTA itself, however, does not play any role in either of these programs.

HOLDINGS

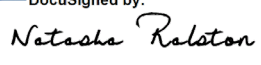
1. Appellant has not established error in FTB’s proposed assessment of tax.
2. The late filing penalty should not be abated.

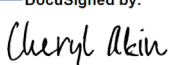
DISPOSITION

FTB’s action is sustained.

DocuSigned by:

 BB3F9EB789F1445...
 Josh Lambert
 Administrative Law Judge

We concur:

DocuSigned by:

 DES000E566FD40F...
 Natasha Ralston
 Administrative Law Judge

DocuSigned by:

 7A8C8E38740B4D5...
 Cheryl L. Akin
 Administrative Law Judge

Date Issued: 4/14/2021