

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**M. CASILLAS**

) OTA Case No. 20056192  
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**OPINION**

Representing the Parties:

For Appellant: M. Casillas

For Respondent: Gi Jung Nam, Tax Counsel

A. WONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, M. Casillas (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$836, a late-filing penalty of \$209, and applicable interest, for the 2017 tax year.

Appellant waived his right to an oral hearing; therefore, we are deciding this matter 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 reasonable cause to abate the late-filing penalty.
3. Whether appellant has established grounds to abate interest.

**FACTUAL FINDINGS**

1. For the 2017 tax year, appellant was a California resident whose filing status was single with no dependents.
2. Appellant did not file a California personal income tax return for the 2017 tax year.
3. Through its Integrated Non-Filer Compliance (INC) program, FTB obtained information about appellant’s wages and withholding credits from the Employment Development

Department (EDD). The EDD information indicated that appellant received wages of \$46,719, as well as a withholding credit of \$512 for California taxes, for the 2017 tax year.

4. On September 16, 2019, FTB issued a Request for Tax Return to appellant, requesting that he file a 2017 return or otherwise respond by October 16, 2019.<sup>1</sup> Appellant did neither.
5. On November 25, 2019, FTB issued to appellant a Notice of Proposed Assessment (NPA), proposing a net tax liability of \$836 and a late-filing penalty of \$209.
6. On January 20, 2020, appellant timely protested the NPA.
7. On April 1, 2020, FTB issued a Notice of Action, affirming the NPA.
8. This timely appeal followed.

### DISCUSSION

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

California residents are taxed upon their entire taxable income, regardless of source. (R&TC, § 17041(a).) Every individual subject to the California Personal Income Tax Law must file with FTB a return specifically stating the items of gross income from all sources and the deductions and credits allowable. (R&TC, § 18501(a).) If a 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.” (R&TC, § 19087(a).)

When FTB makes a tax assessment based on an estimate of income, FTB’s initial burden is to show that its assessment is reasonable and rational. (*Appeal of Bindley*, 2019-OTA-179P; *Appeal of Myers* (2001-SBE-001) 2001 WL 37126924.) 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 income. (*Appeal of Tonsberg* (85-SBE-034) 1985 WL 15812 [use of third-party information reporting].) “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

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<sup>1</sup> FTB’s Request for Tax Return included a 2017 California Filing Requirement Guidelines Chart, which indicates that a California resident who has a filing status of single and is under 65 years old as of December 31, 2017, and has no dependents, is required to file a 2017 return if his/her gross income exceeds \$17,029 or his/her adjusted gross income exceeds \$13,623.

to submit information upon request.” (*Appeals of Dauberger et al.* (82-SBE-082) 1982 WL 11759.)

Federal courts have held that a taxing agency need only introduce “some evidence” linking the taxpayer with the unreported income. (*Rapp v. Commissioner* (9th Cir. 1985) 774 F.2d 932, 935 (*Rapp*)). In *Rapp*, the Ninth Circuit Court of Appeals stated, “Once 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.*) 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 Cal.App.2d 509.) Unsupported assertions are not sufficient to satisfy a taxpayer’s burden of proof. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.)

Here, through its INC program, FTB obtained EDD information indicating that appellant received wage income totaling \$46,719, as well as a withholding credit of \$512 for California taxes, in 2017. Based on these amounts, appellant was required to file a return for the 2017 tax year.<sup>2</sup> FTB used the EDD information to estimate appellant’s unreported income and to propose to assess additional tax of \$836. We find FTB’s use of the EDD information and resulting proposed assessment to be reasonable, rational, and presumptively correct. Appellant now has the burden of rebutting the presumption and establishing that the proposed assessment is arbitrary or erroneous.

On appeal, appellant does not provide any evidence that shows that FTB’s proposed assessment is arbitrary or erroneous, but instead offers three arguments, each of which we address below.

First, appellant challenges FTB’s authority to compel him to file a return and to propose to assess additional taxes absent a filed return. Appellant apparently also objects to FTB’s proposed assessment of additional taxes on constitutional grounds, arguing that this added tax burden discriminates against taxpayers with a filing status of single with no dependents.

The authorities that require appellant to file a return and that authorize FTB to require a return and to propose to assess additional taxes absent a filed return are found in R&TC sections 18501(a) and 19087(a), which we have described above. However, appellant fails to

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<sup>2</sup> See footnote 1, *ante*, page 2.

explain the nature of his challenge to these (or any other) authorities. As for appellant's constitutional argument, the Office of Tax Appeals (OTA) cannot refuse to enforce a statute on the basis of that statute being unconstitutional unless an appellate court has made that determination. (Cal. Const., art. III, § 3.5(a); see also Cal. Code Regs., tit. 18, § 30104(a) [OTA lacks jurisdiction to determine whether a statute is invalid or unenforceable under the federal or California Constitutions unless a federal or California appellate court has already made such a determination].) Appellant has not cited to any appellate court authority invalidating these statutes, nor are we aware of any. Accordingly, we find appellant's first set of arguments meritless.

Second, appellant initially questioned the amount of additional taxes proposed. However, in later briefing, appellant retreats from this position, acknowledging an error in his withholding amount. Because appellant no longer questions the tax liability amount, we will not address appellant's second argument any further.

Third, appellant asks OTA to consider that he was not employed in 2018 and 2019. However, appellant has not supplied us with any authority that would allow us to relieve assessed taxes based on economic hardship, nor are we aware of any. Further, the tax year at issue is 2017, and 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.) Thus, appellant's third argument is unavailing.

For the above-stated reasons, we conclude that appellant has not demonstrated error in FTB's proposed assessment of additional tax.

Issue 2: Whether appellant has established reasonable cause to abate the late-filing penalty.

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 willful neglect. (R&TC, § 19131(a).) A taxpayer has the burden of establishing reasonable cause. (*Appeal of Myers, supra*; *Appeal of Scott* (83-SBE-094) 1983 WL 15480.) In general, to establish that a failure to act was due to reasonable cause, the taxpayer must show that the failure occurred despite the exercise of ordinary business care and prudence; that is, cause existed as would prompt an ordinarily intelligent and prudent businessman to have so acted under similar circumstances. (*Appeal of Bieneman* (82-SBE-148) 1982 WL 11825; *Appeal of Tons* (79-SBE-027) 1979 WL 4068.) The United States Supreme Court has found that each taxpayer has a personal, non-

delegable obligation to file a tax return by the due date. (*United States v. Boyle* (1985) 469 U.S. 241, 252.)

On appeal, appellant “declares” that no penalty applies. Appellant also offers to file his 2017 return in exchange for abating the late-filing penalty.<sup>3</sup>

It is undisputed that appellant did not file a 2017 return. Appellant has not argued that his failure to file a 2017 return was due to reasonable cause and not willful neglect. Accordingly, we conclude that appellant has not established reasonable cause to abate the late-filing penalty.

Issue 3: Whether appellant has established grounds to abate interest.

R&TC section 19101 provides that taxes are due and payable as of the original due date of the taxpayer’s return (without regard to an extension). If tax is not paid by the original due date or if FTB assesses additional tax and that assessment becomes due and payable, the taxpayer is charged interest on the resulting balance due, compounded daily. (R&TC, § 19101.) Interest is not a penalty but is merely compensation for a taxpayer’s use of the money. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) There is no reasonable cause exception to the imposition of interest. (*Ibid.*)

On appeal, appellant requests the abatement of interest in exchange for filing his 2017 return.<sup>4</sup> Although appellant requests interest abatement, he has not identified any basis for abating the interest, and our review of the record suggests that no such basis exists.<sup>5</sup> Accordingly, we conclude that appellant has not established any grounds to abate interest.

HOLDINGS

1. Appellant has not demonstrated error in FTB’s proposed assessment of additional tax.
2. Appellant has not established reasonable cause to abate the late-filing penalty.

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<sup>3</sup> OTA is not authorized to settle a civil tax appeal by reducing tax or penalties, or to compromise a final tax liability, related interest, or penalties. Rather, the Legislature has empowered both FTB and the California Attorney General to pursue settlements and authorized FTB alone to compromise a final tax liability, related interest, or penalties. (See R&TC, §§ 19442, 19443.)

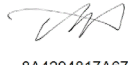
<sup>4</sup> See footnote 3, *ante*.

<sup>5</sup> On appeal, appellant notes that he was unemployed in 2018 and 2019. Interest may be waived for any period for which FTB determines that an individual demonstrates inability to pay that interest solely because of extreme financial hardship caused by significant disability or other catastrophic circumstance. (R&TC, § 19112.) However, here, FTB determined that appellant did not establish any grounds for abating interest, including extreme financial hardship, and OTA does not have the authority to review FTB’s rejection of a taxpayer’s interest-waiver claim based on extreme financial hardship. (*Appeal of Moy*, 2019-OTA-057P.)

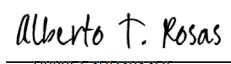
3. Appellant has not established any grounds to abate interest.


DISPOSITION

We sustain FTB’s action.<sup>6</sup>

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Andrew Wong  
Administrative Law Judge

We concur:

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Alberto T. Rosas  
Administrative Law Judge

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Daniel K. Cho  
Administrative Law Judge

Date Issued: 6/9/2021

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<sup>6</sup> 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 making the same or similar arguments.