

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
M. REMLINGER

) OTA Case No. 20096717
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)

OPINION

Representing the Parties:

For Appellant: M. Remlinger

For Respondent: Christopher Cook, Tax Counsel

A. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, M. Remlinger (appellant) appeals an action by the Franchise Tax Board (respondent) proposing additional tax of \$2,823, a late filing penalty of \$404, and applicable interest, for the 2016 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 respondent’s proposed assessment of additional tax, which is based on final federal adjustments.
2. Whether appellant has established reasonable cause for failing to timely file a 2016 return.

FACTUAL FINDINGS

1. Appellant untimely filed a joint 2016 California Resident Income Tax Return (Form 540) on July 26, 2018.¹

¹ Appellant’s spouse did not sign the appeal letter and, therefore, is not a party to this appeal.

2. Subsequently, respondent received information from the IRS indicating that the IRS adjusted appellant's 2016 federal return by, as relevant here, increasing appellant's taxable income by \$48,761.
3. Based on the IRS information, respondent issued a Notice of Proposed Assessment (NPA) that correspondingly increased appellant's taxable income by \$48,761, resulting in a proposed additional tax of \$2,823 and a late filing penalty of \$404.
4. Appellant protested the NPA. Respondent issued a Notice of Action, affirming the NPA. This timely appeal followed.

DISCUSSION

Issue 1: Whether appellant has established error in respondent's proposed assessment of additional tax, which is based on federal adjustments.

When the IRS changes or corrects a taxpayer's federal tax return, the taxpayer must either concede the accuracy of a federal determination or state how the determination is erroneous. (R&TC, § 18622(a).) A deficiency assessment based on a federal audit report is presumed to be correct and the taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Ibid.*)

Appellant contends that he has been trying to get information from the IRS that would show that he owes less than the amount respondent proposes to assess. Appellant received three extensions of time from the Office of Tax Appeals to obtain such information from the IRS to support his position. However, he has not provided any additional evidence to show that the federal determination is erroneous. As such, respondent's assessment of additional tax is upheld.

Issue 2: Whether appellant has established reasonable cause for failing to timely file a 2016 return.

A late filing penalty will be imposed when a taxpayer fails to file a tax return on or before its due date, unless the taxpayer establishes that the late filing was due to reasonable cause and was not due to willful neglect. (R&TC, § 19131(a).) Respondent's imposition of the late filing penalty is presumed correct, and the burden of proof is on the taxpayer to establish otherwise. (*Appeal of Xie*, 2018-OTA-076P.)

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.) Unsupported assertions are insufficient to satisfy the taxpayer's burden. (*Ibid.*)

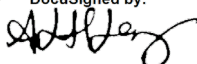
Here, appellant has not provided any arguments, and the evidence does not show, that there was reasonable cause for appellant's late filing of the 2016 return. Thus, appellant has not met his burden of proof to abate the late filing penalty.

HOLDINGS


1. Appellant has not established error in respondent's proposed assessment of additional tax, which is based on final federal adjustments.
2. Appellant has not established reasonable cause for failing to timely file a 2016 return.

DISPOSITION

Respondent's action is sustained.

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Andrea L.H. Long
Administrative Law Judge

We concur:

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Amanda Vassigh
Administrative Law Judge

DocuSigned by:

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Kenneth Gast
Administrative Law Judge

Date Issued: 12/21/2021