

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
J. BEE

) OTA Case No. 21067977
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OPINION

Representing the Parties:

For Appellant: J. Bee

For Respondent: Christopher T. Tuttle, Tax Counsel III

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, J. Bee (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing tax of \$447.32, a late-filing penalty of \$135.00, 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 established error in FTB’s proposed assessment for the 2016 tax year.
- 2. Whether appellant established reasonable cause to abate the late-filing penalty.
- 3. Whether interest may be waived.

FACTUAL FINDINGS

- 1. For the 2016 taxable year, FTB received information that appellant, a nonresident of California, received a schedule K-1 detailing sufficient income (\$12,105) from 4000 Vine Street, LLC, to prompt a California tax return filing requirement. FTB sent a Request for Tax Return requesting that appellant file a return or explain why one was not required.
- 2. 4000 Vine Street, LLC is a limited liability company (LLC) registered to do business in California, located on Vine Street in Riverside, California.

3. When appellant failed to file a return by the requested due date, FTB issued a Notice of Proposed Assessment (NPA) showing a total tax of \$447.32, a late-filing penalty of \$135.00, plus applicable interest.
4. Appellant protested the NPA, contending that he received no income from the partnership in question.
5. FTB responded stating appellant had a filing requirement for tax year 2016 based on the California source income arising from the membership interest in 4000 Vine Street, LLC. FTB further explained that a partner must report their share of partnership income on their personal income tax returns, even if the income is not distributed.
6. FTB issued a Notice of Action, affirming the NPA.
7. Appellant filed this timely appeal.

DISCUSSION

Issue 1: Whether appellant has established error in FTB's proposed assessment for the 2016 tax year.

California imposes a tax on the entire taxable income of a nonresident, such as appellant, to the extent it is derived from sources within this state. (R&TC, §§ 17041(b), 17951(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 proposed assessment based on an estimate of income, FTB's initial burden is to show that its determination is reasonable and rational. (*Appeal of Bindley*, 2019-OTA-179P.)

Once FTB has met its initial burden by linking the taxpayer with an income-producing activity, the taxpayer has the burden of proving that the proposed assessment is arbitrary or erroneous by a preponderance of the evidence. (*Appeal of Bindley*, *supra*.) Unsupported assertions are not sufficient to satisfy the taxpayer's burden of proof. (*Appeal of Talavera*, 2020-OTA-022P.)

Here, FTB has met its initial burden by linking appellant with an income-producing activity reported on a Schedule K-1 issued to appellant. FTB issued its NPA based on a single individual, under 65 years of age, with no dependents. The 2016 filing threshold for gross income is \$16,597 and for AGI is \$13,278. As a nonresident, appellant was required to file a

California income tax return if income from all sources meets the threshold amounts and more than \$1 was received of California-source income. Appellant reported \$259,046 on his 2016 federal income tax return and his share of partnership income from 4000 Vine Street, LLC was \$12,105. Based on information received from third party sources, FTB determined that appellant had a filing requirement. Appellant concedes that he owns an interest in 4000 Vine Street, LLC but contends that he has not received any income from it to date. Based on the above, we find that FTB's estimate was both reasonable and rational. Therefore, the burden of proof is on appellant to show that FTB's action was arbitrary or erroneous.

Pursuant to California Code of Regulations, title 18, section 17951-4(e), when a nonresident is a member of an LLC taxed as a partnership which conducts a unitary business within California, the LLC's total business income is apportioned at the LLC level in accordance with the apportionment rules of the Uniform Division of Income for Tax Purposes Act. In this case, 4000 Vine Street, LLC reported appellant's share of LLC net income for 2016 was \$12,105, which arose from real estate income generated by the LLC. Furthermore, under R&TC section 25136(a)(3), income from the sale, lease, or rental of real property are sourced to California if the real property is located in this state. 4000 Vine Street, LLC is a limited liability company registered to do business in California, located on Vine Street in Riverside, California. Therefore, it is reasonable that the share of appellant's LLC income was properly sourced to California.

Appellant has not provided evidence or documentation to contradict FTB's assessment, nor has appellant established that the income totaling \$12,105 is not taxable. Therefore, we conclude that appellant was required to file a 2016 California tax return and is liable for the proposed tax of \$447.32.

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

FTB imposes a late-filing penalty when a taxpayer does not timely file a return, unless it is shown that the failure to timely file was due to reasonable cause and not due to willful neglect. (R&TC, § 19131(a).) When FTB imposes this penalty, the law presumes that it is correct. (*Appeal of Xie*, 2018-OTA-076P.)

A taxpayer has the burden of establishing reasonable cause. (*Appeal of Xie, supra.*) The applicable standard of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(c).) Taxpayers must provide credible and competent evidence to support the claim of

reasonable cause; otherwise, the penalty will not be abated. (*Appeal of Xie, supra.*) Ignorance of the law is not reasonable cause for the failure to comply with statutory requirements. (*Appeal of Cremel and Koepfel, 2021-OTA-222P.*)

Appellant does not contest the penalty calculation; rather, appellant expressed concerns that no income was received from 4000 Vine Street, LLC, and thus, he did not think he had a California tax return filing requirement. Although appellant may have had a sincere belief that he was not required to file a return in California, that belief alone does not constitute reasonable cause for the failure to file a timely return. (*Appeal of Cremel and Koepfel, supra.*) Therefore, appellant has not demonstrated that the late-filing penalty was improperly imposed or that it should be abated for reasonable cause.

Issue 3: Whether interest can be waived.

The imposition of interest on a tax payment is mandatory. (R&TC, § 19101(a).) Interest is charged from the due date of the tax payment to the date the tax is paid. (R&TC, §19101(a).) Interest is not a penalty but is compensation for the taxpayer's use of money after it should have been paid to the state. (*Appeal of Moy, 2019-OTA-057P.*) There is no reasonable cause exception to the imposition of interest and interest can only be waived in certain limited situations when authorized by law. (*Ibid.*)

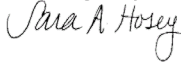
To obtain an interest waiver, appellant must qualify under one of the following statutes: R&TC sections 19104, 21012, or 19112. First, R&TC section 19104 does not apply here because appellant does not allege, and the evidence does not show, that the interest at issue is attributable, in whole or in part, to any unreasonable error or delay by an officer or employee of FTB when performing a ministerial or managerial act. Second, R&TC section 21012 does not apply as FTB did not provide appellant with any requested written advice. Lastly, appellant does not allege, and the evidence does not show, that appellant is unable to pay interest due to "extreme financial hardship caused by significant disability or other catastrophic circumstance." (R&TC, § 19112.) In any event, OTA does not have jurisdiction to review FTB's denial of a request to waive interest under R&TC section 19112. (*Appeal of Moy, supra.*) Accordingly, appellant is not entitled to an interest waiver.

HOLDINGS

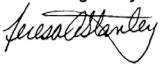
1. Appellant has not established error in FTB’s proposed assessment for the 2016 tax year.
2. Appellant has not established reasonable cause to abate the late-filing penalty.
3. Interest may not be waived.


DISPOSITION

FTB’s action is sustained.

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 Sara A. Hosey
 Administrative Law Judge

We concur:

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 Teresa A. Stanley
 Administrative Law Judge

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 Josh Lambert
 Administrative Law Judge

Date Issued: 3/30/2022