

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
R. CARTER

) OTA Case No. 21108819
)
)
)
)

OPINION

Representing the Parties:

For Appellant: R. Carter

For Respondent: Sarah J. Fassett, Tax Counsel

For Office of Tax Appeals: Oliver Pfof, Tax Counsel

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, R. Carter (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$1,899.00, a late-filing penalty of \$474.75, and applicable interest, for the 2018 tax year.

This matter was decided pursuant to the provisions of the Small Case Program. (Cal. Code Regs, tit. 18, § 30209.1 et seq.) The Opinion rendered in this matter cannot be treated as precedent for any other appeal before the Office of Tax Appeals (OTA). Appellant waived the right to an oral hearing and the matter is being decided based on the written record.

ISSUE

Whether appellant established error in FTB’s proposed tax assessment.

FACTUAL FINDINGS

1. Appellant did not file a 2018 California personal income tax return.
2. Through its Integrated Non-Filer Compliance Program, FTB learned from the IRS that appellant received non-employee compensation from a business located in Los Angeles, California, distributions from a retirement-related account, and social security benefits in

2018. FTB determined that appellant should have filed a 2018 California tax return based on that information.
3. In May 2021, FTB mailed appellant a request to file a tax return. FTB did not receive a response from appellant to that request.
 4. In July 2021, FTB mailed appellant a Notice of Proposed Assessment. In that document FTB estimated appellant's income based on the information received from the IRS. After applying the standard deduction and other exemption credits, FTB proposed to assess tax of \$1,899.00, a late-filing penalty of \$474.75, and interest.
 5. Appellant protested the proposed assessment, stating that he could not pay the proposed tax, penalty, and interest because of various life circumstances.
 6. FTB affirmed its proposed assessment in a Notice of Action, and it is this Notice of Action appellant timely appeals to OTA.

DISCUSSION

California imposes a tax on the entire taxable income of its residents, and a tax on income derived from California sources for its part-year and nonresidents. (R&TC, § 17041.) Every individual subject to California's personal income tax shall file a tax return stating, among other items, their worldwide income, and allowable deductions and credits. (R&TC, § 18501.) If an individual subject to California's personal income tax does not file a tax return, FTB may estimate the individual's net income from any available information, and based on that estimate, propose to assess the amount of tax, penalties, fees, and interest due. (R&TC, § 19087.)

If FTB makes 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.) If FTB meets this initial burden, the assessment is presumed correct, and the burden shifts to the taxpayer to prove it erroneous. (*Ibid.*) Reports and other documents prepared by the IRS, such as wage and income transcripts, are reliable sources of information upon which FTB may make a tax assessment. (See *Appeal of Gorin*, 2020-OTA-018P.)

On appeal, FTB provides a copy of a wage and income transcript prepared by the IRS in connection with appellant's 2018 tax year. The transcript shows appellant received non-employee compensation, distributions from a retirement-related account, and social security benefits in that tax year. As a general rule, social security benefits are not subject to California's income tax. (R&TC, § 17087.) Here, only the non-employee compensation and

retirement-related account distributions were used by FTB to estimate appellant's income. FTB's tax assessment is therefore reasonable and rational.¹

Appellant does not argue FTB's proposed assessment is erroneous. Instead, appellant carries with him the arguments previously made to FTB during the protest. Namely, he cannot afford the tax, late-payment penalty, and interest because he is unemployed, advanced in his years, in poor health, lacking in real and personal property of value, and without ready money or savings. Appellant provides a letter from the IRS in which that agency states it has temporarily ceased collection action because it determined appellant could not pay his federal tax liabilities.

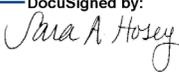
Nevertheless, OTA is not a court but an administrative agency charged with determining the correct amount of tax. (*Appeals of Dauberger, et al.* (82-SBE-082) 1982 WL 11759.) OTA therefore lacks the authority to eliminate or reduce taxes, penalties, fees, or interest based solely on a taxpayer's inability to pay. (*Appeal of Estate of Luebbert, Deceased, and Luebbert* (71-SBE-082) 1982 WL 11759.) FTB offers several options to taxpayers who cannot pay their liabilities, such as an Offer in Compromise or installment payment agreements. Appellant may contact FTB for more information regarding these options.

HOLDING

Appellant has not established error in FTB's proposed tax assessment.

DISPOSITION

FTB's action is sustained.

DocuSigned by:

6D3FE4A0CA514E7...
Sara A. Hosey
Administrative Law Judge

Date Issued: 4/19/2022

¹ Based solely on the wage and income transcript, it appears FTB overestimated appellant's income by two dollars. This overestimate is de minimis because it does not affect the amount of the tax, late-payment penalty, or interest.