

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
A. GALLO

) OTA Case No. 21098702
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OPINION

Representing the Parties:

For Appellant:

A. Gallo

For Respondent:

Christopher M. Cook, Tax Counsel

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, A. Gallo (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing tax of \$1,681, a late-filing penalty of \$420.25, and applicable interest,¹ for the 2018 tax year.

Appellant waived the right to an oral hearing; therefore, Office of Tax Appeals (OTA) decides this matter based on the written record.

ISSUE

Whether appellant has demonstrated error in FTB’s determination that appellant has a filing requirement for the 2018 tax year and owes tax.

FACTUAL FINDINGS

1. Appellant is a California resident. Appellant’s filing status is single.
2. FTB received a 2018 federal Form 1099-MISC (2018 Form 1099) from Uber Technologies, Inc. (Uber) reporting \$51,755 in income paid to appellant.² FTB

¹ Appellant concedes interest and “late fees,” which OTA interprets to mean the late-filing penalty. Accordingly, OTA will not address interest and the late-filing penalty further.

² Although FTB also determined that appellant earned a small amount of income based on appellant’s 2018 sales tax return filed with the California Department of Tax and Fee Administration filed as a sole proprietorship,

- determined that appellant earned sufficient income for the 2018 tax year to prompt a filing requirement.
3. FTB issued appellant a Request for Tax Return for the 2018 tax year (Request) asking that he file or provide evidence that he already filed his 2018 California tax return, or explain why he had no filing requirement for the 2018 tax year.
 4. When appellant did not respond, FTB issued a Notice of Proposed Assessment (NPA) for the 2018 tax year. Appellant protested the NPA.³
 5. In a letter, FTB acknowledged the protest and affirmed its position that appellant had a filing requirement for the 2018 tax year. The letter requested that appellant file his 2018 California tax return within 30 days.
 6. Appellant failed to file his return within the deadline,⁴ and FTB issued a Notice of Action affirming the NPA.
 7. This timely appeal followed.

DISCUSSION

R&TC section 18501 requires every individual subject to the Personal Income Tax Law to make and file a return with the FTB “stating specifically the items of the individual’s gross income from all sources and the deductions and credits allowable,” if an individual has gross income or adjusted gross income exceeding certain filing thresholds. (R&TC, § 18501(a)(1)-(4).) For the 2018 tax year, the filing threshold for a single individual under 65 years of age with no dependents is gross income of at least \$17,693 or adjusted gross income of at least \$14,154.⁵

Here, appellant was a California resident whose filing status was single. FTB determined

the primary source of appellant’s income was the 2018 Form 1099. OTA notes that the 2018 Form 1099 is not in the record.

³ Appellant’s protest did not address FTB’s estimated income based on his 2018 sales tax return. Therefore, OTA does not address it further.

⁴ In a July 14, 2021 letter, appellant requested an extension to file his 2018 California tax return. The July 14, 2021 letter included a summary of his protest grounds.

⁵ FTB annually adjusts the filing thresholds for tax years beginning on or after January 1, 1996. (See R&TC, § 18501(d).)

that appellant's age was under the age of 65,⁶ and appellant had no dependents. As described above, the 2018 filing threshold for a single individual under 65 years of age with no dependents is gross income of at least \$17,693 or adjusted gross income of at least \$14,154. As reported on the 2018 Form 1099, Uber paid appellant \$51,755, which exceeds the gross income threshold for the 2018 tax year based on appellant's filing status. Thus, appellant had a 2018 California filing requirement.⁷

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." California imposes a tax on the entire taxable income of a resident, such as appellant. (R&TC, § 17041(a)(1).) When FTB makes a proposed assessment based on an estimate of income, FTB's initial burden is to show why its proposed assessment is reasonable and rational. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509, 514; *Appeal of Bindley*, 2019-OTA-179P (*Bindley*).) An assessment based on unreported income is presumed correct when the taxing agency introduces a minimal factual foundation to support the assessment. (*In re Olshan* (9th Cir. 2004) 356 F.2d 1078, 1084; *Bindley, supra*.)

Here, appellant failed to file a 2018 California tax return, even after FTB issued him a Request. FTB estimated appellant's 2018 income based on the 2018 Form 1099. Appellant does not dispute that he received some income from Uber.⁸ FTB's use of the 2018 Form 1099 to estimate appellant's taxable income is both reasonable and rational. (*Bindley, supra*.)

Once the FTB has met its initial burden, the proposed assessment of tax is presumed correct and the taxpayer has the burden of proving it to be wrong. (*Todd v. McColgan, supra*; *Bindley, supra*.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Bindley, supra*.) In the absence of credible, competent, and relevant evidence showing error in FTB's determination, the determination must be upheld. (*Bindley, supra*.) A taxpayer's failure to produce evidence that is within his or her control gives rise to a presumption that such evidence is unfavorable to his or her case. (*Bindley, supra*.)

⁶ Appellant states he was born in 1960, yet claims he was older than 60. However, an individual born in 1960 would have been approximately 58 years of age during 2018 and thus under the age of 65.

⁷ See 2018 FTB Publication 1031, p.3, available at: https://ftb.ca.gov/forms/2018/18_1031.pdf. If either the gross income or adjusted gross income threshold is exceeded, an individual has a filing requirement.

⁸ Appellant concedes he was an Uber driver in 2018. In his appeal, appellant provided examples of how he earned income as an Uber driver.

Appellant disputes the amount of income reported on the 2018 Form 1099, stating that it reports “Uber’s gross [income], not my gross [income].” Appellant has not provided any supporting documentation to establish the 2018 Form 1099 is incorrect. Unsupported assertions are not sufficient to satisfy a taxpayer’s burden of proof. (*Bindley, supra.*)


Appellant argues that he owes “a fraction of the proposed assessment,” as he incurred applicable expenses and deductions that would reduce adjusted gross income. However, appellant provides no evidence to support his driving expenses or deductions. In the absence of credible, competent, and relevant evidence showing error in FTB’s determination, the determination must be upheld. (*Bindley, supra.*) The documentation of such expenses, including car and driver’s insurance, car repairs, gas costs, is within appellant’s control, not FTB’s. Thus, appellant has not shown error in FTB’s proposed assessment of tax.⁹

HOLDING


Appellant has not demonstrated error in FTB’s determination that appellant has a filing requirement for the 2018 tax year and owes tax.

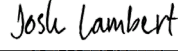
DISPOSITION

FTB’s action is sustained.

DocuSigned by:

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Asaf Kletter
Administrative Law Judge

We concur:

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Administrative Law Judge

DocuSigned by:

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Josh Lambert
Administrative Law Judge

Date Issued: 5/17/2022

⁹ In his September 27, 2021 appeal, appellant requests an extension of time to file his 2018 California tax return. Appellant has still has not filed more than six months later. OTA notes that FTB has made several requests for appellant to file, and appellant still has not filed. Thus, there is no need to defer or postpone proceedings.