

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
T. COE

) OTA Case No. 21118976
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OPINION

Representing the Parties:

For Appellant: T. Coe

For Respondent: Camille Dixon, Tax Counsel

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, T. Coe (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing tax of \$639, a late-filing penalty of \$159.75, and applicable interest, for the 2018 tax year.

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

ISSUES

1. Whether appellant has demonstrated error in FTB’s determination that appellant has a filing requirement for the 2018 tax year and owes tax.
2. Whether appellant has shown reasonable cause for the late filing of appellant’s 2018 California tax return.
3. Whether appellant is entitled to interest abatement.

FACTUAL FINDINGS

1. Appellant is a California resident. FTB received several 2018 Forms 1099-MISC (2018 Forms 1099) from Vanguard Brokerage Services and other third-party income sources

collectively reporting that appellant received a total of \$35,555 in income.¹ FTB determined that appellant earned sufficient income for the 2018 tax year to prompt a filing requirement.

2. FTB sent 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. Filing enforcement action was held pending resolution of a fire disaster in appellant's area of residence. Following release of the operations hold, FTB sent appellant a second Request.²
3. When appellant did not respond, on March 25, 2021, FTB issued a Notice of Proposed Assessment (NPA) for the 2018 tax year. Appellant protested the NPA.³
4. FTB issued a Notice of Action (NOA) affirming the NPA.
5. This timely appeal followed.

DISCUSSION

Issue 1: Whether appellant has demonstrated error in FTB's determination that appellant has a filing requirement for the 2018 tax year and owes tax.

R&TC section 18501 requires every individual subject to the Personal Income Tax Law to make and file a return with 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

¹ The 2018 Forms 1099 reported a total of \$2,761 from dividend income: \$2,755 (rounded) from Vanguard; and \$6 from other third-party income sources. The 2018 Forms 1099 also reported a total of \$32,794 from brokerage proceeds (1099-B income): \$14,976 (rounded) from Vanguard; and \$17,818 from all other brokerage sources. The \$35,555 income at issue is the sum of these amounts (i.e., \$2,761 + \$32,794). OTA notes that FTB's estimate of the Vanguard income, \$17,731 (i.e., \$2,761 + 17,976) is less than the \$37,360.83 gain reported on appellant's 2018 Form 1099 from Vanguard. The 2018 Forms 1099 from the other income sources are not in the record.

² The first Request was sent to appellant's address in Los Angeles, California, which matches the address reported on appellant's 2018 Form 1099 from Vanguard. The second Request was sent to appellant's address in Sylmar, California, which matches the address listed on appellant's appeal letter to OTA.

³ The NPA was sent to appellant's address in Sylmar, California. Appellant asserted at protest that he was a victim of identity theft. Appellant's protest listed the Sylmar address as his address of record. FTB determined that appellant was not a victim of identity theft.

65 years of age with no dependents is gross income of at least \$17,693 or adjusted gross income of at least \$14,154.⁴

Here, appellant was a California resident. FTB determined that appellant's filing status was single, appellant's age was under the age of 65, 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 Forms 1099, appellant had gross income of \$35,555, which exceeds the filing threshold for the 2018 tax year based on appellant's filing status. Thus, appellant had a 2018 California filing requirement.⁵

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. Appellant does not dispute that he received income reported on the 2018 Forms 1099 and even provides a copy of the 2018 Form 1099 from Vanguard corroborating FTB's determination that he received income exceeding the 2018 California filing thresholds. FTB's use of Form 1099-MISC to estimate appellant's taxable income is both reasonable and rational. (*Bindley, supra*.)

Once 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.

⁴ FTB annually adjusts the filing thresholds for tax years beginning on or after January 1, 1996. (See R&TC, § 18501(d).)

⁵ 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, a California resident has a filing requirement.

(*Bindley, supra.*) In the absence of credible, competent, and relevant evidence showing error in FTB's determination, the determination must be upheld. (*Bindley, supra.*)

Appellant provides no evidence to support that he does not have a 2018 California filing requirement. Indeed, the 2018 Form 1099 from Vanguard by itself shows that appellant had gross income exceeding the 2018 California filing thresholds. Rather, appellant argues on appeal that the NOA is the first time he was made aware of the issue. However, the record shows that FTB sent a Request to both the Los Angeles and Sylmar addresses and the NPA to appellant's Sylmar address and that appellant protested the NPA in response. Further, appellant's protest listed the same Sylmar address as his address of record. OTA finds that appellant was aware of his filing requirement. In the absence of credible, competent, and relevant evidence showing error in FTB's determination, the determination must be upheld. (*Bindley, supra.*) Appellant has not shown error in FTB's proposed assessment of tax.

Issue 2: Whether appellant has shown reasonable cause for the late filing of appellant's 2018 California tax return.

R&TC section 19131 provides that a late-filing penalty shall 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 is due to reasonable cause and not due to willful neglect. When FTB imposes a penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Xie, 2018-OTA-076P.*) Appellant raises no argument that the penalty was imposed in error, and OTA finds that FTB correctly imposed the penalty after appellant did not respond to its Requests.

To establish reasonable cause, a taxpayer must show that the failure to file a timely return occurred despite the exercise of ordinary business care and prudence, or that cause existed as would prompt an ordinary intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of GEF Operating, Inc., 2020-OTA-057P.*) Appellant has still not filed a 2018 California tax return. Contrary to appellant's claim, the record shows that appellant was notified that he had a 2018 California filing requirement. As discussed above, appellant was required to file a return for the 2018 tax year. Even if a taxpayer is unaware of a filing requirement, ignorance of the law does not excuse compliance with statutory requirements. (*Ibid.*) Appellant provides no evidence demonstrating reasonable cause, and a review of the record does not show any facts and circumstances that would warrant a finding of reasonable cause. Therefore, no basis exists to abate the late-filing penalty.

Issue 3: Whether appellant is entitled to interest abatement.

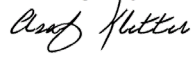
Imposing interest is mandatory, and FTB cannot abate interest except where authorized by law. (R&TC, § 19101; *Appeal of Balch*, 2018-OTA-159P.) Interest is not a penalty; it is compensation for the use of money. (*Appeal of Balch*, *supra*.) Interest accrues on a deficiency assessment regardless of the reason for the assessment. (*Ibid.*) Generally, to obtain relief from interest, taxpayers must qualify under R&TC section 19104, 19112, or 21012. (*Appeal of Balch*, *supra*.) Appellant does not allege that any of the three statutory provisions for interest abatement apply to the facts of this case; and based on the evidence in the record, OTA concludes that none of these statutory provisions apply. Rather, appellant argues that interest should be abated because he received no notice of a filing requirement, which appears to be a reasonable cause-type argument. However, there is no reasonable cause exception to the imposition of interest. (*Appeal of Gorin*, 2020-OTA-018P.) Therefore, appellant has not demonstrated any grounds for interest abatement.

HOLDINGS

1. Appellant has not demonstrated error in FTB’s determination that appellant has a filing requirement for the 2018 tax year and owes tax.
2. Appellant has not shown reasonable cause for the late filing of appellant’s 2018 California tax return.
3. Appellant is not entitled to interest abatement.

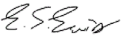
DISPOSITION

FTB’s action is sustained.


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 Asaf Kletter
 Administrative Law Judge

We concur:

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 Elliott Scott Ewing
 Administrative Law Judge

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 Amanda Vassigh
 Administrative Law Judge

Date Issued: 5/18/2022