

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**J. SLEVKOFF**

) OTA Case Number 21037418  
)  
)  
)  
)  
)

**OPINION**

Representing the Parties:

For Appellant: J. Slevkoff

For Respondent: Eric R. Brown, Tax Counsel III

For Office of Tax Appeals (OTA): Tom Hudson, Tax Counsel III

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, J. Slevkoff (appellant) appeals from the action of Franchise Tax Board (FTB) in proposing to assess tax of \$1,691.00, a late filing penalty of \$422.75, a demand penalty of \$422.75, a filing enforcement cost recovery fee of \$97.00, and applicable interest, for the 2018 taxable year.

Appellant waived his right to an oral hearing, so the matter is being decided on the basis of the written record.

**ISSUES**

1. Whether appellant has shown any error in the proposed assessment.
2. Whether the late filing penalty should be waived.
3. Whether the demand penalty should be waived.
4. Whether the filing enforcement fee can be waived.
5. Whether the frivolous appeal penalty should be imposed.

### FACTUAL FINDINGS

1. Appellant has not filed a California income tax return for the 2018 taxable year.
2. FTB obtained information reported on Form 1099-R indicating that appellant received income of \$53,728 during 2018.
3. In 2020, FTB mailed appellant a Demand for Tax Return (Demand) requesting that appellant either file a California income tax return, show that he had already filed such a return, or else explain why he did not have a filing requirement for 2018.
4. After appellant did not respond to the Demand, FTB issued a Notice of Proposed Assessment (NPA) to appellant, proposing to assess \$1,691.00 in tax, a late filing penalty of \$422.75, a demand penalty of \$422.75, and a filing enforcement cost recovery fee of \$97.00, plus applicable interest, for the 2018 taxable year. The NPA explained that FTB estimated appellant's income based on the information provided by the Form 1099-R.
5. Appellant filed a protest, which FTB rejected via a Notice of Action that affirmed the NPA, stating that appellant had not shown the proposed assessment to be incorrect.
6. Appellant previously received a Demand for the 2017 taxable year, which was dated April 26, 2019. Appellant did not respond to that Demand and an NPA was issued for the 2017 taxable year on July 12, 2019.
7. Appellant previously filed an appeal with the State Board of Equalization (BOE), OTA's predecessor, for the 2009 and 2010 taxable years. In that appeal, appellant made similar arguments, such as the assertion that FTB had no authority to tax appellant and that FTB was engaged in racketeering. In a decision dated July 28, 2015, BOE not only sustained FTB's actions, but also imposed a frivolous appeal penalty in the amount of \$750. Moreover, in a letter dated March 17, 2021, OTA advised appellant of this agency's limited jurisdiction and the possibility that a frivolous appeal penalty would be imposed in this matter.

### DISCUSSION

#### Issue 1: Proposed Tax Assessment

If any taxpayer fails to file a return, the FTB “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 the FTB proposes a tax assessment based on an

estimate of income, its initial burden is to show that the proposed assessment was reasonable and rational. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; *Appeal of Talavera*, 2020-OTA-022P.) A proposed assessment based on unreported income is presumed to be correct when the taxing agency introduces a minimal factual foundation to support the assessment. (See *In re Olshan* (9th Cir. 2004) 356 F.3d 1078, 1084, citing *Palmer v. IRS* (9th Cir. 1997) 116 F.3d 1309, 1312.) When a taxpayer fails to file a valid return and refuses to cooperate in the ascertainment of his income, FTB is given “great latitude” in determining the amount of his tax liability. (*Appeals of Tonsberg* (85-SBE-034) 1985 WL 15812.)

FTB’s determination is presumed to be correct, and the taxpayer has the burden of proving otherwise. (*Appeal of Davis and Hunter-Davis*, 2020-OTA-182P.) Unsupported assertions are not sufficient to satisfy a taxpayer’s burden of proof. (*Ibid.*) In the absence of credible, competent, and relevant evidence showing error, FTB’s determinations must be upheld. (*Ibid.*) The burden of proof requires proof by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(c).)

Here, FTB met its initial burden by presenting evidence of a \$53,728 distribution to appellant, which was reported on his 2018 Form 1099-R. Appellant makes various assertions, but he has not denied receiving the distribution, he has not shown that this distribution was not subject to tax, he has not provided evidence of his actual income in 2018, and he has not presented evidence that his tax liability was incorrectly calculated. Therefore, we have no evidentiary basis to overturn FTB’s proposed assessment.

#### Issue 2: Late Filing Penalty

A late filing penalty is imposed when a taxpayer fails to file a tax return on or before the due date, unless the taxpayer establishes that the late filing was due to reasonable cause and not willful neglect. For every month that the return is late, the penalty is 5 percent of the tax due, up to a maximum of 25 percent. (R&TC, § 19131(a).) 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 businessman to have acted in such a way under similar circumstances. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) Unsupported assertions are not enough to satisfy a taxpayer’s burden of proof. (*Ibid.*)

Here, appellant has not contested the computation of the late filing penalty. Instead, he has made various unsupported assertions,<sup>1</sup> but he has not provided any evidence showing that he had no filing requirement. In addition, appellant has not shown that he had reasonable cause for failing to file a timely tax return. Under these circumstances, the late filing penalty cannot be waived.

### Issue 3: Demand Penalty

A demand penalty may be imposed when a taxpayer fails or refuses to file a tax return upon notice and demand by FTB, unless the failure is due to reasonable cause and not willful neglect. (R&TC, § 19133.) Furthermore, the demand penalty will not be imposed unless FTB has proposed an assessment of tax under R&TC section 19087(a), after the taxpayer failed to timely respond to a Request for Tax Return or a Demand for Tax Return for any taxable year that is within the four-taxable-year period immediately preceding the taxable year for which the current Demand for Tax Return is issued. (Cal. Code Regs., tit. 18, § 19133.) The demand penalty is 25 percent of the taxpayer's total tax liability for the year. (R&TC, § 19133.)

Here, the demand penalty is warranted because the NPA was issued after 2019, appellant did not respond to the Demand, *and* appellant had previously received an NPA for the 2017 taxable year, after having failed to respond to a Demand for that year. (Cal. Code Regs., tit. 18, §19133(b), (e).) Appellant has not contested the amount of the penalty. Appellant has not argued or proven that he responded to the Demand for the 2018 taxable year in a timely manner. Appellant has not provided any information or evidence that might demonstrate a reasonable cause for his failure to respond. Therefore, there are no obvious legal grounds for a penalty waiver, and we must conclude that the penalty was properly imposed.

### Issue 4: Filing Enforcement Fee

The filing enforcement cost recovery fee is imposed by FTB in accordance with R&TC section 19254(a)(2) whenever a taxpayer fails to file a tax return required by the Personal Income Tax Law within 25 days after FTB mailed a demand to file the tax return. Once properly imposed, there is no statutory provision that would excuse FTB from imposing the filing

---

<sup>1</sup> As an illustration, appellant asserts that the “SLEVKOFF estate and I are not engaged in an activity the STATE OF CALIFORNIA legislature can rule (prohibit) and regulate and said estate has never been engaged in an activity the STATE OF CALIFORNIA legislature can legislate and tax.” Such vague and unsupported assertions are insufficient to meet appellant's burden of proof with regarded to the issues in this appeal.

enforcement cost recovery fee for any circumstances, including reasonable cause. (*Appeal of GEF Operating, supra.*) The amount of the fee is specified by the Legislature in the Annual Budget Act. (R&TC § 19254(b).)

Here, the filing enforcement cost recovery fee was properly imposed because appellant did not respond to FTB's Demand for Tax Return in a timely manner. OTA has no authority to waive this fee or modify the amount specified by the Legislature.

#### Issue 5: Frivolous Appeal Penalty

OTA may impose a penalty of up to \$5,000 whenever it appears that a proceeding before it has been instituted or maintained primarily for delay or that the taxpayer's position in the proceeding is frivolous or groundless.<sup>2</sup> (R&TC, § 19714.) OTA's Rules for Tax Appeals contain the following non-exclusive list of factors to be considered when determining whether to impose the penalty, and in what amount: (1) whether the taxpayer is making arguments that have been previously rejected by OTA in a precedential opinion, by BOE in a Formal Opinion, or by the courts; (2) whether the taxpayer is repeating arguments that he advanced unsuccessfully in prior appeals; (3) whether the taxpayer filed the appeal with the intent of delaying legitimate tax proceedings or the legitimate collection of tax owed; (4) whether the taxpayer has a history of filing frivolous appeals or failing to comply with California's tax laws; and (5) whether the taxpayer has been notified, in a current or prior appeal, that a frivolous appeal penalty might apply. (Cal. Code Regs., tit. 18, § 30217(b)(1-5).)

In this appeal, appellant has raised frivolous arguments that have been rejected consistently by OTA, BOE, and state and federal courts. Appellant has raised many of the same sorts of arguments<sup>3</sup> that he raised in his appeal to BOE with respect to the 2009 and 2010 taxable years, such as the allegation that the FTB has no authority to tax him and the FTB is engaged in racketeering.<sup>4</sup> Appellant was warned by OTA, by a letter dated March 17, 2021, that the

---

<sup>2</sup> R&TC section 19714 refers to proceedings before the "State Board of Equalization or any court of record." However, R&TC section 20(b) provides that this phrase now refers to OTA because BOE's authority to handle income and business tax appeals has been transferred to this agency.

<sup>3</sup> Appellant makes numerous arguments, including due process arguments, which are outside OTA's jurisdiction, and arguments that are inconsequential and/or irrelevant. (See Cal. Code Regs., tit. 18, §§ 30103, 30104.) We summarily dismiss such arguments and will not discuss them further.

<sup>4</sup> With regard to appellant's various allegations, we emphasize that OTA has no authority to resolve any grievances that appellant may have against FTB aside from the correct amount of appellant's California income tax liability, if any. (*Appeals of Dauberger, et al.* (82-SBE-082) 1982 WL 11759.)

frivolous appeal penalty might be imposed. After appellant argued in his brief that he did not recognize OTA’s jurisdiction over this matter, OTA gave him an opportunity to withdraw his appeal, which he declined to do. We also note that appellant still has not filed a California income tax return for the 2018 taxable year.

For these reasons, we conclude that a frivolous appeal penalty of \$3,000 is appropriate. (See *Appeal of Balch*, 2018-OTA-159P.) We caution appellant that we will not hesitate to impose additional frivolous appeal penalties pursuant to R&TC section 19714, up to the maximum of \$5,000 per appeal, if appellant files additional appeals that raise similarly frivolous arguments.

HOLDINGS

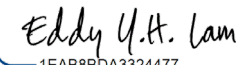
1. Appellant has not shown any error in the proposed assessment.
2. There are no grounds to waive the late filing penalty.
3. There are no grounds to waive the demand penalty.
4. The filing enforcement fee cannot be waived.
5. We impose a frivolous appeal penalty of \$3,000.


DISPOSITION

FTB’s actions are sustained.

DocuSigned by:  
  
 0C90542BE88D4E7...  
 \_\_\_\_\_  
 Tommy Leung  
 Administrative Law Judge

We concur:

DocuSigned by:  
  
 1EAB8BDA3324477...  
 \_\_\_\_\_  
 Eddy Y.H. Lam  
 Administrative Law Judge

DocuSigned by:  
  
 6D3FE4A0CA514E7...  
 \_\_\_\_\_  
 Sara A. Hosey  
 Administrative Law Judge

Date Issued: 5/26/2022