

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
G. COHEN

) OTA Case No. 21067933
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OPINION

Representing the Parties:

For Appellant:

Tony Navarro, Enrolled Agent
Gabriel, Nameholder of
Gabriel Lazar Cohen

For Respondent:

Christopher T. Tuttle, Tax Counsel III
Maria Brosterhous, Tax Counsel IV

K. GAST, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, G. Cohen (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$901.25 for the 2017 tax year.¹

Office of Tax Appeals (OTA) Administrative Law Judges Kenneth Gast, Sheriene Anne Ridenour, and Tommy Leung held an electronic oral hearing for this matter on March 23, 2022. At the conclusion of the hearing, the record was closed and this matter was submitted for a decision.

ISSUE

Whether appellant has shown FTB improperly denied appellant’s refund claim.

¹ This refund consists of tax of \$652 and a late-filing penalty of \$163, plus interest. Since appellant does not specifically dispute imposition of the penalty or interest other than they should be withdrawn and therefore refunded because FTB’s proposed assessment of tax is invalid, we do not discuss them further.

FACTUAL FINDINGS

1. FTB received information from a third-party source indicating appellant had received income of \$35,098 from an unrelated entity called Etsy, Inc. that required appellant to file a California resident individual income tax return for the 2017 tax year.²
2. Because appellant had not (and still has not) filed an individual tax return, FTB sent appellant a Request for Tax Return (Request) that required appellant to respond by filing a 2017 return, providing evidence a return was already filed, or explaining why a return was not required to be filed. The Request was addressed to “Gabriel L Cohen.”
3. Appellant responded to FTB’s Request, asserting “[m]y name is Gabriel Lazar, and I am the name holder and CEO of the registered business entity GABRIEL LAZAR COHEN.” (All caps in original.) Appellant further asserted “this business is a sole proprietorship, a pass-through entity with no tax liability,” and the income in question is not subject to tax.
4. FTB then issued to appellant a Notice of Proposed Assessment (NPA) for the 2017 tax year, which estimated appellant’s income to be \$35,098 and proposed an individual income tax of \$652 and a late-filing penalty of \$163, plus interest. Like the Request, the NPA was addressed to “Gabriel L Cohen.” The NPA went final.
5. After FTB issued to appellant a State Income Tax Balance Due Notice (also addressed to “Gabriel L Cohen”) requesting payment of the amounts due for the 2017 tax year, appellant sent a series of letters to FTB and the Taxpayers’ Rights Advocate’s Office disputing that appellant owed the asserted individual income tax liabilities.
6. Appellant ultimately paid the asserted 2017 tax year liabilities and filed a refund claim, which FTB denied. This timely appeal followed.

DISCUSSION

Taxpayers bear the burden of proving entitlement to their refund claims. (*Appeal of Jali, LLC*, 2019-OTA-204P.) In an action for refund, taxpayers cannot assert error and thus shift to the state the burden to justify the tax. (*Dicon Fiberoptics, Inc. v. Franchise Tax Bd.* (2012) 53 Cal.4th 1227, 1235.) Unsupported assertions are insufficient to satisfy taxpayers’ burden of proof. (*Appeal of Wright Capital Holdings LLC*, 2019-OTA-219P.) FTB’s determinations

² For the 2017 tax year, a single individual under age 65 with no dependents realizing California gross income of at least \$17,029 or California adjusted gross income of at least \$13,623 was required to file a California income tax return.

cannot be successfully rebutted when taxpayers fail to provide credible, competent, and relevant evidence as to the issues in dispute. (*Ibid.*)

Appellant contends appellant is not an individual but rather a sole proprietorship called “Gabriel Lazar Cohen.” Appellant argues that because appellant is a pass-through entity that does not owe California individual income taxes, FTB’s proposed assessment that asserts appellant owes such taxes cannot be sustained. Gabriel, the nameholder of “Gabriel Lazar Cohen” and the individual present at the oral hearing for this appeal, asserts he is not “Gabriel Lazar Cohen,” his full legal name is not “Gabriel Lazar,” and he is “a living man with no legal name,” he “do[es] not exist civilly, and [he] cannot transact business or earn income.” Appellant’s contentions are meritless.

A sole proprietorship is not a legal entity itself but instead refers to a natural person who directly owns the business. (See *Providence Washington Ins. Co. v. Valley Forge Ins. Co.* (1996) 42 Cal.App.4th 1194, 1199.) For income tax purposes, a sole proprietorship is treated the same as its individual owner. (See *Appeal of Bindley*, 2019-OTA-179P [noting that “[f]or federal and California income tax purposes, a sole proprietorship neither files income tax returns nor pays income tax. Rather, the owner of the sole proprietorship reports all items of income on his or her individual tax return (i.e., on federal Schedule C) and must pay any taxes due”].) Therefore, since FTB’s notices, including the NPA, were undisputedly sent to the sole proprietorship, it does not matter whether such notices were sent to the sole proprietorship under its assumed name, “Gabriel Lazar Cohen,” or to its nameholder, “Gabriel,” who does not dispute he was the sole individual owner of “Gabriel Lazar Cohen.”³

In addition, even if FTB’s notices were incorrectly addressed to “Gabriel Lazar Cohen,” the sole proprietorship, instead of its individual owner, “Gabriel,” those notices can still be valid despite some alleged error or lack of information contained in the notices. (See, e.g., *Olsen v.*

³ We also question appellant’s assertion that appellant is not an individual or that “Gabriel Lazar Cohen” is a different person from “Gabriel.” Although “Gabriel Lazar Cohen” appears to be a registered business name in Minnesota, the Minnesota Certificate of Assumed Name lists “Cohen, Gabriel Lazar” not only under the “nameholder” section but also under the “signed by” section. Appellant’s correspondences sent to FTB, as well as appellant’s appeal letter to OTA, are also signed by “Cohen, Gabriel Lazar dba GABRIEL LAZAR COHEN.” (All caps in original.) Further, on appellant’s appeal letter to OTA, appellant lists what appears to be a nine-digit social security number—generally issued only to individuals by the U.S. Social Security Administration—that matches the last four digits of the social security number for “Gabriel L. Cohen” in two exhibits submitted by FTB entitled “Proposed Assessments List” and “Payments List.” We further note there is no evidence in the record—such as a driver’s license or individual tax returns—to suggest “Gabriel,” the nameholder of the sole proprietorship, “Gabriel Lazar Cohen,” and the individual present at the oral hearing for this appeal, is a different person from “Gabriel Lazar Cohen.”

Helvering (2d Cir. 1937) 88 F.2d 650 [an error in taxpayer’s name does not necessarily invalidate a notice of deficiency]; *Rio Grande Holding, Inc. v. Commissioner*, T.C. Memo. 1994-240 [same].) Here, assuming FTB’s notices addressed to the sole proprietorship should have instead been addressed to its individual owner “Gabriel,” “Gabriel” still undisputedly received the notices, which computed an individual income tax based on individual rates, deductions, and exemptions. “Gabriel” was therefore placed on notice that as a California resident taxable on all his income regardless of source (see R&TC, § 17041(a)), he properly owed California individual income taxes on his sole proprietorship’s business income.⁴ Indeed, “Gabriel” raises frivolous arguments and presents no credible evidence to refute FTB’s contention he received the income in question, which was paid by Etsy, Inc. to appellant’s personal tax identification number.

Lastly, appellant asserts—and as support submits notices and correspondence with FTB showing—that an identical or similar dispute to the one here involved the 2018 tax year, which was resolved in appellant’s favor. However, since the 2018 tax year is not before us, we decline to draw any conclusions or inferences from that year for purposes of deciding the 2017 tax year that is before us. (See *Burnet v. Sanford & Brooks Co.* (1931) 282 U.S. 359, 365-366 [it is a well-settled principle in tax law that each tax year stands on its own and must be reviewed separately].) Although FTB has not explained why it withdrew its NPA issued to appellant for the 2018 tax year, for reasons discussed above, we question its decision to do so if it was presented with the same evidence that has been presented here.

⁴ Although “Gabriel” asserts he is not a California resident because he has no legal name and does not exist civilly, we decline to address this argument because it is frivolous and without merit. (See, e.g., IRS Notice 2010-33, 2010-17 I.R.B. 609, III(10) [characterizing as frivolous the argument that a taxpayer is not a person within the meaning of the Internal Revenue Code]; IRS Rev. Rul. 2007-22, 2007-14 I.R.B. 866 [same].)

HOLDING

Appellant has not shown FTB improperly denied appellant’s refund claim.

DISPOSITION

FTB’s action is sustained.⁵

DocuSigned by:
Kenneth Gast
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Kenneth Gast
Administrative Law Judge

We concur:

DocuSigned by:
Sheriene Anne Ridenour
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Sheriene Anne Ridenour
Administrative Law Judge

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

Date Issued: 4/12/2022

⁵ Appellant is advised that OTA has the statutory authority to impose a penalty of up to \$5,000 if it finds that an appeal before it has been instituted or maintained primarily for delay or that a taxpayer’s position in the appeal is frivolous or groundless. (R&TC, § 19714; see also Cal. Code Regs., tit. 18, § 30217.) Although we do not impose that penalty in this proceeding, appellant’s positions in this appeal suggest that such a penalty may be warranted in the future should appellant file another appeal with OTA raising the same or similar issues.