

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
M. SOBEL

) OTA Case No. 21078157
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OPINION

Representing the Parties:

For Appellant: M. Sobel

For Respondent: Alisa Pinarbasi, Tax Counsel

For Office of Tax Appeals: Nguyen Dang, Tax Counsel III

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code section 19045, M. Sobel (appellant) appeals an action by the Franchise Tax Board (respondent) proposing additional tax of \$856, a late filing penalty of \$214, and applicable interest for the 2017 taxable year.

This matter is decided on the written record pursuant to the provisions set forth in the Office of Tax Appeals’ Small Case Program (Cal. Code Regs, tit. 18, § 30209.1 et seq.).¹

ISSUE

Whether appellant has shown error in respondent’s proposed assessment for the 2017 taxable year.

FACTUAL FINDINGS

1. Appellant did not file a 2017 California income tax return.
2. Respondent thereafter obtained appellant’s 2017 federal Wage and Income Transcript, and determined that appellant received a total of \$38,520 in income from Uber Technologies, Inc. and Lyft, Inc.

¹ Appellant waived the right to an oral hearing and made a qualifying and irrevocable election to have this matter decided under the Small Case Program.

3. Consequently, respondent issued a Notice of Proposed Assessment (NPA) to appellant reflecting this determination and imposing a late filing penalty.
4. Appellant protested the NPA, which respondent denied by issuing a Notice of Action affirming the NPA.

DISCUSSION

Respondent's proposed assessment, which is based on third-party information reporting, is presumed correct and appellant bears the burden of establishing otherwise. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509, 514; *Appeal of Myers* (2001-SBE-001) 2019 WL 1187160.) Unsupported assertions are insufficient to meet this burden. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.)

Appellant does not dispute the receipt of \$38,520 in income, that he was required to file a 2017 tax return, or that the late filing penalty was properly imposed. Appellant's sole contention is that his tax liability is \$0, as indicated on appellant's 2017 federal and state income tax return filings, and by implication, the penalty, which is computed based on the outstanding tax due, should also be reduced to \$0.

However, there is no evidence to support appellant's claim that his tax liability was \$0, and appellant does not explain why respondent's proposed assessment is erroneous. There is no record of appellant having ever filed a 2017 federal or state income tax return from which it might be inferred as to how he arrived at a \$0 tax due amount. While conceivably appellant received \$38,520 in payments as a driver on the Uber and Lyft ridesharing platforms with deductible expenses associated with earning that income (or possibly other offsetting credits and deductions), without some evidence of what those might be and their relative amounts, we are unable to make any adjustments in appellant's favor. (See *Appeal of Dandridge*, 2019-OTA-458P [credits and deductions are a matter of legislative grace and taxpayers bear the burden of proving entitlement thereto by producing credible evidence that the credit or deduction claimed falls within the requirements of the law].)

Accordingly, we find no error in respondent's proposed assessment.

HOLDING

Appellant has not shown error in respondent’s proposed assessment for the 2017 taxable year.

DISPOSITION

Respondent’s action is sustained.

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Tommy Leung
Administrative Law Judge

Date Issued: 3/9/2022