

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

D. KHACHEKIAN

) OTA Case No. 21119062
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OPINION

Representing the Parties:

For Appellant:

D. Khachekian

For Respondent:

Christopher T. Tuttle, Tax Counsel III

H. LE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, D. Khachekian (appellant) appeals an action by the Franchise Tax Board (respondent) proposing additional tax of \$5,445.00, a late-filing penalty of \$1,361.25, a demand penalty of \$1,361.25, a filing enforcement fee of \$97.00, and applicable interest, for the 2017 tax year.¹

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

ISSUE

Whether appellant has proven error in respondent's proposed assessment.

FACTUAL FINDINGS

1. Appellant did not file a California income tax return for the 2017 tax year.
2. Respondent received information, indicating that appellant paid \$17,639 in mortgage interest in 2017. On this basis, respondent issued a Demand for Tax Return (Demand).

¹ Appellant has not provided any arguments or evidence for the abatement, or against the imposition, of the late-filing penalty, the demand penalty, the filing enforcement fee, and interest. In addition, OTA's review of the record finds no basis to reverse respondent's action as to the referenced penalties, fee, and interest. Accordingly, OTA will not address these issues further.

3. After appellant failed to respond to the Demand, respondent issued a Notice of Proposed Assessment (NPA) that estimated appellant's total income to be six times the mortgage interest paid of \$17,639, or \$105,834. Based on this income, and after a deduction and credit, the NPA proposed a tax liability.
4. Appellant protested the NPA but did not submit any evidence in support of his position that he did not earn income for the 2017 tax year.
5. Subsequently, respondent issued a letter requesting bank statements and other documents to show that appellant did not have a filing requirement.
6. After appellant failed to respond, respondent issued a Notice of Action, affirming its NPA.
7. This timely appeal followed.

DISCUSSION

R&TC section 17041 imposes a tax upon the entire taxable income of every resident of this state. R&TC section 18501 requires every individual subject to the Personal Income Tax Law to make and file a return with respondent "stating specifically the items of the individual's gross income from all sources and the deductions and credits allowable" R&TC section 19087(a) provides that if any taxpayer fails to file a return, respondent 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."

When respondent makes a proposed assessment of additional tax based on an estimate of income, respondent's initial burden is to show why its proposed assessment is reasonable and rational. (*Appeal of Bindley*, 2019-OTA-179P.) A proposed assessment based on unreported income is presumed correct when the taxing agency introduces a minimal factual foundation to support the assessment. (*Ibid.*)

Here, respondent received information, indicating that appellant paid \$17,639 in mortgage interest in 2017. Based on this information, respondent estimated appellant's California income to be \$105,834 by multiplying the reported mortgage interest of \$17,639 by six (i.e., \$17,639 x 6 = \$105,834). This 6:1 ratio of income to mortgage interest paid is based on respondent's study of California tax returns filed in various tax years. The study works on the premise that if a nonfiler had enough income to make mortgage payments, then, by inference, the taxpayer may have received sufficient income to have a filing requirement. Accordingly,

respondent met its initial burden of establishing that its proposed assessment is reasonable and rational.

Once respondent has met this initial burden, the burden then shifts to the taxpayer to prove the proposed assessment is wrong. (*Appeal of Bindley, supra.*) The burden of proof requires proof by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(c).) A preponderance of evidence means that the taxpayer must establish by documentation or other evidence that the circumstances it asserts are more likely than not to be correct. (*Appeal of Gillespie, 2018-OTA-052P.*) A party’s failure to produce evidence that is within its control gives rise to a presumption that such evidence is unfavorable to its case. (*Appeal of Bindley, supra.*)

Appellant asserts that he has been unemployed and has not earned any income for the 2017 tax year. Appellant further asserts that his living expenses are paid by his family members. However, appellant has not provided any evidence to support his assertions, despite respondent’s requests to obtain such evidence. Accordingly, appellant has not met the burden of proving error in respondent’s proposed assessment.

HOLDING

Appellant has not proven error in respondent’s proposed assessment.


DISPOSITION

OTA sustains respondent’s action in full.

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Huy “Mike” Le
Administrative Law Judge

We concur:

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Ovsep Akopchikyan
Administrative Law Judge

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Natasha Ralston
Administrative Law Judge

Date Issued: 8/1/2022