

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 21129336  
M. TAFOYA )  
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**OPINION**

Representing the Parties:

For Appellant: M. Tafoya  
For Respondent: Joel Smith, Tax Counsel III

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, M. Tafoya (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$2,423.00, a late-filing penalty of \$605.75, and applicable interest, for the 2017 tax year.

Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

**ISSUES**

1. Whether appellant has shown error in FTB’s proposed assessment for the 2017 tax year.
2. Whether appellant has shown reasonable cause to abate the late-filing penalty.

**FACTUAL FINDINGS**

1. FTB obtained information indicating appellant paid mortgage interest of \$11,141 on California property in 2017.
2. FTB’s records did not show appellant filing a California income tax return for the 2017 tax year. FTB issued a Request for Tax Return (Request) for the 2017 tax year stating that appellant may have a filing requirement based on the mortgage interest payments and requested a response.

3. Appellant responded to the Request stating that the mortgage was paid with funds from the refinance of a home loan. Appellant does not dispute that she is a California resident.
4. FTB responded with a letter requesting appellant provide supporting documentation for appellant's position.
5. FTB issued a Notice of Proposed Assessment (NPA) for the 2017 tax year when appellant did not respond to the letter. The NPA estimated appellant's income to be \$66,846.00 and proposed a tax liability of \$2,423.00 and a late-filing penalty of \$605.75.
6. Appellant protested the NPA. FTB requested appellant file a 2017 income tax return or provide financial statements for January, June, and December of 2017 as support for appellant's position.
7. FTB issued a Notice of Action affirming the NPA when it did not receive a response from appellant.
8. Appellant then filed this timely appeal.

#### DISCUSSION

##### Issue 1: Whether appellant has shown error in FTB's proposed assessment for the 2017 tax year.

California residents are taxed upon their entire taxable income (regardless of source). (R&TC, § 17041(a).) R&TC section 18501 requires that every individual subject to the Personal Income Tax Law, whose gross income from all sources exceeds certain filing thresholds, 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 . . . ." (R&TC, § 18501(a)(1)-(4).) 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."

If FTB proposes a tax assessment based on an estimate of income, its initial burden is to show why its assessment is reasonable and rational. (*Appeal of Bindley*, 2019-OTA-179P.) The taxing agency need only introduce some minimal factual foundation to support the assessment. (*Ibid.*) When a taxpayer fails to file a valid return, FTB's use of income information from various sources may be a reasonable and rational method of estimating taxable income. (See *Palmer v. Internal Revenue Service* (9th Cir. 1997) 116 F.3d 1309, 1313.) Once FTB has met its initial burden, its determination is presumed correct, and the taxpayer has the burden of proving

it is wrong. (*Appeal of Bindley, supra.*) The applicable burden of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(c); *Appeal of Estate of Gillespie*, 2018-OTA-052P.) In the absence of credible, competent, and relevant evidence showing error in FTB's determination, the determination must be upheld. (*Appeal of Bindley, supra.*)

Here, appellant did not file a California income tax return for the 2017 tax year. It is reasonable and rational for FTB to conclude that appellant earned enough income to pay the mortgage payments for 2017. In addition, it is reasonable and rational for FTB to estimate appellant's income based on its study and analysis of tax returns filed by California residents, which assist FTB in formulating a ratio of average total income to mortgage interest payments. Therefore, FTB met its initial burden. Since FTB has met its initial burden, its determination is presumed correct, and appellant has the burden of proving it is wrong. (See *Appeal of Bindley, supra.*)

Appellant argues that the only income she received in 2017 was from state disability insurance and unemployment benefits and that her mortgage payments and living expenses were paid using these two incomes plus her savings. FTB invited appellant to provide documentation substantiating appellant's contention as to the source of funds used to pay the mortgage. Such documentation could include bank statements from appellant's checking or savings accounts or statements from the Employment Development Department regarding disability or unemployment payments. However, appellant has not provided any supporting documentation to explain how the mortgage payments were made and how appellant supported herself financially. Consequently, we find that appellant's assertions are not supported by any evidence. Appellant's unsupported assertions are not sufficient to overcome the presumption of correctness that applies to FTB's deficiency assessment. (*Appeal of Bindley, supra.*) Accordingly, appellant has not met the burden of proving error in FTB's proposed assessment.

Issue 2: Whether appellant has shown reasonable cause to abate the late-filing penalty.

FTB imposes a late-filing penalty when a taxpayer does not timely file a return, unless it is shown that the failure to timely file was due to reasonable cause and not due to willful neglect. (R&TC, § 19131(a).) When FTB imposes this penalty, the law presumes that it is correct. (*Appeal of Xie*, 2018-OTA-076P.) A taxpayer has the burden of establishing reasonable cause. (*Appeal of Scott* (82-SBE-249) 1982 WL 11906.)

Here, appellant's 2017 return was due April 15, 2018. It is undisputed that appellant did not timely file a return for the 2017 tax year. Appellant has not made any arguments with respect to why the late-filing penalty should be abated. We have previously held that a taxpayer must provide credible and competent evidence supporting a claim of reasonable cause to overcome the presumption that FTB's penalty is correct. (*Appeal of Xie, supra.*) 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 ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of Auburn Old Town Gallery, LLC, 2019-OTA-319P.*) As discussed above, appellant has not substantiated her arguments that she did not have duty to file an income tax return for 2017. Accordingly, OTA finds that appellant has not established reasonable cause for abatement of the penalty.

HOLDINGS

1. Appellant has not shown error in FTB’s proposed assessment for the 2017 tax year.
2. Appellant has not shown reasonable cause to abate the late-filing penalty.

DISPOSITION

FTB’s action is sustained in full.

DocuSigned by:  
*Sara A. Hosey*  
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Sara A. Hosey  
Administrative Law Judge

We concur:

DocuSigned by:  
*Ovsep Akopchikyan*  
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Ovsep Akopchikyan  
Administrative Law Judge

DocuSigned by:  
*Josh Aldrich*  
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Josh Aldrich  
Administrative Law Judge

Date Issued: 8/19/2022