

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

In the Matter of the Appeal of:  
**A. SCOTT**

) OTA Case No. 21129262  
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**OPINION**

Representing the Parties:

For Appellant: A. Scott

For Respondent: Sarah J. Fassett, Tax Counsel

A. KWEE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, A. Scott (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$1,270.00, a delinquent filing penalty of \$317.50, and applicable interest, for the 2017 tax year. This matter is being decided based on the written record because appellant waived the right to an oral hearing.

**ISSUES**

1. Whether appellant established error in FTB’s proposed tax assessment.
2. Whether appellant established a basis for abating the delinquent filing penalty.

**FACTUAL FINDINGS**

1. Appellant’s employer reported to FTB that it paid appellant California source wages, tips, and other compensation for the 2017 tax year. Appellant’s employer, a California entity, reported a California address for appellant on his Form W2 (wage and income tax statement). Appellant also received pension and annuity income from the Social Security Administration, and 1099-MISC non-employee compensation from a finance center. All entities reported a California address for appellant.

2. Appellant did not ever file a state income tax return with FTB for the 2017 tax year.
3. FTB issued appellant a request for tax return for tax year 2017 (Request) on November 3, 2020.
4. Appellant timely responded to the Request on November 15, 2020. In his response, appellant did not provide the information requested by FTB. Instead, appellant provided his name, last four digits of his social security number, marital status (single), indicated he was over 65 years old, signature, and left all other fields blank with the exception of the box to provide more information. Here, appellant provided the following explanation for why he was not required to file a 2017 tax return: “On November 29, 2001 filed with state of Calif[ornia] Declaration of non-juristic status and formal and constructive notice.”
5. On July 16, 2021, FTB issued a Notice of Proposed Assessment (NPA) for the liability at issue herein. The liability included the Form W2 income from his employer, but it did not include any of the 1099-MISC income from the finance center.
6. On September 10, 2021, appellant timely protested the NPA, repeating his earlier contention, and also clarifying that he had mailed his declaration of non-juristic status (Declaration of Status) to Chief Justice Ronald M. George, of the California Supreme Court, on November 29, 2001. Appellant did not otherwise dispute FTB’s calculation of the liability.
7. On November 3, 2021, FTB issued a Notice of Action affirming the proposed assessment set forth in its NPA.
8. This timely appeal to the Office of Tax Appeals (OTA) followed.
9. On appeal, appellant submits his November 29, 2001, Declaration of Status. Appellant signed his Declaration of Status, and below his signature on the 2001 declaration, appellant had written the same California mailing address reported by his employer on his 2017 Form W2.

10. In his Declaration of Status, appellant states that he served a “Declaration of Expatriation” to the President of the United States on November 21, 2001, and to the Governor of California on November 29, 2001. Appellant appears to believe that because the governor and president were served with his Declaration of Expatriation, appellant is no longer a United States citizen. Appellant also asserts that the only basis for United States citizenship is the fourteenth amendment to the United States Constitution and that it only applies to freed slaves, which he is not; therefore, there is no legal authority to consider him as a United States citizen. Appellant also asserts that the IRS has conspired to overthrow the United States government. Appellant also makes a number of additional contentions which are not relevant to this appeal.
11. Appellant also provides a copy of his Declaration of Expatriation, wherein appellant purports to sever all ties with the United States, and with the State of California, and instead declares that he is now an American Citizen of the California State.
12. Appellant also provides proof of service date-stamped November 21, 2001, indicating that his Declaration of Expatriation was mailed from his address in California to the Executive Office of the President in Washington, D.C.

### DISCUSSION

#### Issue 1: Whether appellant established error in FTB’s proposed tax assessment.

California’s personal income tax is imposed on the entire taxable income of a California resident, regardless of source. (R&TC, § 17041(a).) Every individual subject to this tax with income over a specified threshold amount must file a tax return with FTB. (R&TC, § 18501(a).) In the case of a single individual over the age of 65, with no dependents, the filing threshold for 2017 was at least \$19,323 in adjusted gross income, or \$22,729 in gross income. (R&TC, § 18501(a), (b).) Except where specifically excluded, gross income means all income from whatever source derived, including income derived from a business. (R&TC, § 17071; Int.Rev. Code, § 61.) Adjusted gross income means gross income, minus specified deductions, such as trade or business expenses. (R&TC, § 17072; Int.Rev. Code, § 62.)

In the case of a failure to file a return, FTB may issue a proposed tax assessment based on an income estimate and may make such estimate using any available information. (R&TC, § 19087(a).) FTB’s proposed assessment is presumed correct once FTB shows a reasonable and

rational basis for the estimation. (*Appeal of Bindley*, 2019-OTA-179P.) The tax agency has wide latitude in estimating income when taxpayers fail to file a return or provide the information necessary to ascertain their tax liability. (*Palmer v. Internal Revenue Service* (9<sup>th</sup> Cir. 1997) 116 F.3d 1309, 1312; *Andrews v. Commissioner*, T.C. Memo. 1998-316 [use of data from the Bureau of Labor Statistics is an acceptable and reasonable method to estimate income]; *Appeal of Walter R. Bailey*, 92-SBE-001.) 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.*) In the absence of credible, competent, and relevant evidence showing error in FTB's determination, the determination must be upheld. (*Ibid.*)

Here, appellant failed to file a return and offered no reliable documentation to support his contention that he is not required to file a return for 2017. Instead, according to federal forms filed with the IRS, appellant earned \$45,389 in wages, and \$1,672 as an independent contractor for a finance center, in addition to the nontaxable social security benefits. This exceeds the threshold for the 2017 filing requirement for gross income in California. Thus, appellant was required to file a 2017 return with FTB.

Appellant failed to file a 2017 return, despite several requests to do so. Therefore, it was proper for FTB to estimate appellant's income. FTB estimated gross income of \$45,390, less a standard deduction of \$4,236, and taxable income of \$41,154, for the 2017 tax year. FTB's estimate does appear erroneous, because the documents in the written record reflect that appellant earned at least \$47,061 in gross income for 2017 (\$45,389 + \$1,672), and \$42,825 in taxable income (\$42,825 - \$4,236), not including the nontaxable social security benefits. However, the error is in appellant's favor because FTB is not asserting liability for the unreported independent contractor income from the finance center. In any event, we find appellant's contention that he is not required to file a return is unsupported by the evidence.

Appellant's other contentions, including his contention that he is not a United States citizen, that the fourteenth amendment to the United States Constitution does not apply to him, and that he has non-juristic status, are the type of constitutional arguments which have been found frivolous by the IRS and OTA, and we decline to address them further.<sup>1</sup> (See IRS Notice

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<sup>1</sup> Pursuant to California Code of Regulations, title 18, section 30217, OTA places appellant on notice that if OTA determines that a franchise or income tax appeal is frivolous or has been filed or maintained primarily for the purpose of delay, OTA may impose a frivolous appeal penalty, and that appellant's appeal history, including this appeal, may be taken into consideration in determining whether to impose such a penalty and the amount of the penalty. (See Rev. & Tax. Code, § 19714.)

2010-33, *Appeal of Reed*, 2021-OTA-326P.) Therefore, appellant failed to establish that FTB's proposed assessment is overstated.

Issue 2: Whether appellant established a basis for abating the delinquent filing penalty.

R&TC section 19131 imposes a penalty for the failure to timely file a return, unless it is shown that the late filing is due to reasonable cause and not willful neglect. (R&TC, § 19131(a).) The amount of the penalty is 5 percent of the tax due, after allowing for timely payments, for every month or fraction of a month that the return is late, up to a maximum 25 percent penalty. (R&TC, § 19131(a).) The penalty will be abated if a taxpayer establishes that the failure to file was due to reasonable cause and not willful neglect. (R&TC, § 19131(a).)

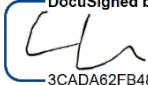
FTB correctly asserts that the failure-to-file penalty applies at the maximum rate of 25 percent of appellant's estimated tax liability of \$1,384, because appellant has not filed a tax return and 5 or more months have elapsed from the due date of the 2017 tax return. Appellant does not request abatement of the \$317.50 penalty for reasonable cause, and has provided no evidence to show that his failure to file a return was due to reasonable cause. Instead, appellant appears to contend that the estimated tax liability (and thus, the penalty calculated thereon) is in error because the State of California, and the United States of America, lacked jurisdiction over his person. There is no basis to find that the penalty was improperly imposed or overstated, or to otherwise abate the penalty.

HOLDINGS

1. Appellant failed to establish any error in FTB’s proposed tax assessment.
2. Appellant failed to establish a basis for abating the delinquent filing penalty.

DISPOSITION

FTB’s action is sustained.

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 Andrew J. Kwee  
 Administrative Law Judge

We concur:

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 Tommy Leung  
 Administrative Law Judge

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 Eddy Y.H. Lam  
 Administrative Law Judge

Date Issued: 10/17/2022