

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
R. MERCADO

) OTA Case No. 21057727
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OPINION

Representing the Parties:

For Appellant:

R. Mercado

For Respondent:

Brian Werking, Tax Counsel III

For Office of Tax Appeals:

Deborah Cumins,
Business Taxes Specialist III

K. GAST, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, R. Mercado (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing tax of \$1,295.00, a late-filing penalty of \$323.75, a notice and demand penalty of \$323.75, and a filing enforcement cost recovery fee of \$97.00, plus applicable interest, for the 2016 tax year.

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

ISSUE¹

Whether appellant has shown error in FTB’s proposed assessment.

FACTUAL FINDINGS

1. FTB obtained information from third-party sources indicating appellant received wages totaling \$45,272 for the 2016 tax year: \$10,828 from IHSS Recipients; \$17,222 from

¹ Because appellant has not specifically contested the late-filing penalty, the notice and demand penalty, the filing enforcement cost recovery fee, or interest, they will not be discussed further.

- Kern High School District Educational Foundation; and \$17,222 from Shafter High School.²
2. FTB determined the amount of these wages was sufficient to require appellant to file a 2016 California resident income tax return. Because appellant had not filed a 2016 California tax return, FTB issued a Demand for Tax Return for that tax year, requesting either she provide a copy of her return (if one was already filed), file her return (if one was not filed), or determine if she had a filing requirement. Appellant did not respond.
 3. FTB then issued a Notice of Proposed Assessment (NPA) for the 2016 year that estimated appellant's gross income to be \$45,272.00: \$10,828.00 from IHSS Recipients; \$17,222.00 from Kern High School District; and (another) \$17,222.00 from Kern High School District. The NPA proposed to assess tax of \$1,295.00, a late-filing penalty of \$323.75, a notice and demand penalty of \$323.75, and a filing enforcement cost recovery fee of \$97.00, plus applicable interest.
 4. Appellant protested the NPA, contending FTB's estimate of her gross income improperly duplicated her wages of \$17,222 from Kern High School District.
 5. FTB issued a Notice of Action that affirmed the NPA. This timely appeal followed.³
 6. On appeal, FTB reviewed appellant's 2016 federal Wage and Income Transcript, which indicates Kern High School District only paid to appellant wages of \$17,222.00 and not double that amount.⁴ Therefore, FTB concedes appellant only earned gross income of \$28,050.00 (i.e., \$10,828.00 from IHSS Recipients and \$17,222.00 from Kern High School District), and has reduced its proposed tax to \$385.00, the late-filing penalty to \$135.00, and the notice and demand penalty to \$96.25, plus applicable interest.⁵

DISCUSSION

California residents are taxed upon their entire taxable income, regardless of source. (R&TC, § 17041(a)(1).) Every individual subject to the Personal Income Tax Law, whose gross

² It appears Shafter High School is part of Kern High School District.

³ The record does not reflect appellant ever filed a 2016 California tax return.

⁴ This is based on two Forms W-2 issued by Kern High School District: one shows \$17,222 in wages; and the other was amended to report zero wages instead of the \$17,222 that was originally reported.

⁵ The filing enforcement cost recovery fee, which is not computed based on tax due, was not reduced and remains \$97.00.

income from all sources exceeds certain filing thresholds, is required 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).) 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.” (R&TC, § 19087(a).)

When FTB makes a proposed assessment of additional tax 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.) An assessment based on unreported income is presumed correct when the taxing agency introduces a 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 to estimate a taxpayer’s taxable income is a reasonable and rational method of estimating taxable income. (*Appeal of Sheward*, 2022-OTA-228P.)

Here, appellant did not file a 2016 California resident income tax return. FTB received information from third-party sources indicating appellant earned wages sufficient to require her to file a 2016 return (i.e., \$10,828 from IHSS Recipients, \$17,222 from Kern High School District, and (another) \$17,222 from Kern High School District). FTB’s use of this information is a reasonable and rational method of estimating taxable income. Therefore, FTB has introduced a minimal factual foundation to support its proposed assessment.

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.*) In her appeal letter, appellant does not appear to dispute that for the 2016 tax year, she earned gross income of \$28,050: \$10,828 from IHSS Recipients; and \$17,222 from Kern High School District. Rather, her sole contention is FTB improperly double counted her wages of \$17,222 from Kern High School District in its proposed assessment. However, on appeal, FTB’s concedes this issue, agrees to remove this income (i.e., \$17,222) to reflect appellant only earned total gross income of \$28,050, and has revised its

proposed assessment accordingly.⁶ Appellant has not alleged there is any other error in FTB’s proposed assessment and OTA discerns none.

HOLDING

Appellant has not shown error in FTB’s proposed assessment beyond the concession made by FTB on appeal.

DISPOSITION

FTB’s action is modified to reflect its concession that appellant only earned gross income of \$28,050 and it will revise its proposed assessment accordingly. Otherwise, FTB’s action is sustained.

DocuSigned by:
Kenneth Gast
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Kenneth Gast
Administrative Law Judge

We concur:

DocuSigned by:
Asaf Kletter
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Asaf Kletter
Administrative Law Judge

DocuSigned by:
Andrew Wong
8A4294817A67463...
Andrew Wong
Administrative Law Judge

Date Issued: 10/27/2022

⁶ In its proposed assessment, FTB assumed appellant was single and under the age of 65, with no dependents. Such individuals are required to file a California tax return for 2016 if, as relevant here, they realize California gross income of more than \$16,597. Since appellant earned gross income of at least \$28,050, she was required to file a 2016 California tax return, and she presents no evidence showing otherwise.