

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
V. DEGUZMAN

) OTA Case No. 220510344
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OPINION

Representing the Parties:

For Appellant: V. Deguzman

For Respondent: Bradley J. Coutinho, Tax Counsel III

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, V. Deguzman (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing tax of \$497, a late filing penalty of \$135, and applicable interest, for the 2018 tax year.

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.1.) Appellant waived the right to an oral hearing; therefore, Office of Tax Appeals (OTA) decides the matter based on the written record.

ISSUES

1. Whether appellant has demonstrated error in FTB’s proposed assessment of tax.
2. Whether appellant has established reasonable cause to abate the late filing penalty for the 2018 tax year.

FACTUAL FINDINGS

1. Appellant did not file a 2018 California resident income tax return.
2. Through FTB’s Integrated Non-Filer Compliance Program, FTB obtained Form W-2 information that appellant earned wages from Land Home Financial Services, Inc. for the

- 2018 tax year. Based on this information, FTB estimated appellant's taxable income and determined that appellant had a filing requirement for the 2018 tax year.¹
3. FTB issued to appellant a Request for Tax Return for the 2018 tax year, requesting that he file a return or explain why no return was required. Appellant responded that he has been detained in jail since October 12, 2018, and that his ex-wife filed for divorce on October 19, 2018.
 4. Since appellant did not file a 2018 return or supply information showing he had no filing requirement, FTB issued a Notice of Proposed Assessment (NPA) for the 2018 tax year based on his estimated wage income. The NPA proposed tax, a late filing penalty, and applicable interest.
 5. Appellant filed a timely protest, asserting that he cannot file his taxes due to a lack of resources in county jail and he does not have the means to pay the tax.
 6. Thereafter, FTB issued a Notice of Action affirming the NPA.
 7. This timely appeal followed.

DISCUSSION

Issue 1: Whether appellant has demonstrated error in FTB's proposed assessment of tax.

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. When FTB makes a proposed assessment based on an estimate of income, FTB's initial burden is to show why its proposed tax assessment is reasonable and rational. (*Appeal of Bindley*, 2019-OTA-179P.) Federal courts have held that the taxing agency need only introduce some evidence linking the taxpayer with the unreported income. (*Ibid.*) When a taxpayer fails to file a valid return, FTB's use of income information from third party sources to estimate a taxpayer's taxable income is a reasonable and rational method of estimating taxable income. (*Ibid.*) Once FTB has met its initial burden, the proposed assessment is presumed correct and the taxpayer has the burden of proving it wrong. (*Ibid.*)

FTB used information from appellant's 2018 Form W-2, which reported appellant's earned wages, to estimate his taxable income for the 2018 tax year. Appellant does not dispute

¹ FTB did not include income from cancellation of debt from BMW Financial Services NA, LLC, as indicated by appellant's IRS Wage and Income Transcript for the 2018 tax year. Since this appears to be in appellant's favor, it will not be discussed further.

earning income from Land Home Financial Services, Inc. Therefore, FTB met its initial burden to show that the proposed tax assessment is reasonable and rational, its proposed assessment is presumed correct, and appellant has the burden of proving that the proposed assessment is wrong. (*Appeal of Bindley, supra.*) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid.*) A taxpayer's failure to produce evidence that is within his or her control gives rise to a presumption that such evidence is unfavorable to his or her case. (*Ibid.*)

Appellant asserts that he does not have the ability to file and pay the taxes because he does not have the resources to file a tax return while serving time in jail. He further asserts he does not have the financial means to pay the tax (as his ex-wife filed for divorce on October 19, 2018), it is financially difficult for his ex-wife to pay the tax bills, and COVID-19, the economy, and inflation are "overwhelming to bear" for appellant. However, these contentions do not address the correctness of FTB's estimation of appellant's income and the proposed tax. In particular, appellant provides no documentation or other evidence that his Form W-2 is erroneous. Consequently, appellant's assertions are insufficient to overcome the presumption of correctness that applies to FTB's proposed deficiency assessment. (*Appeal of Bindley, supra.*) Accordingly, appellant has not met his burden of proving error in FTB's proposed assessment.

Furthermore, OTA is cognizant of appellant's contention regarding his financial hardship, but lacks authority to make discretionary adjustments to a proposed assessment based on a taxpayer's ability to pay.² (*Appeal of Robinson, 2018-OTA-059P.*) Therefore, OTA has no legal basis to make any adjustments to the proposed assessment.

Issue 2: Whether appellant has established reasonable cause to abate the late filing penalty for the 2018 tax year.

California imposes a penalty for the failure to file a return by its due date, unless the failure to file was due to reasonable cause and not due to willful neglect. (R&TC, § 19131.) To establish reasonable cause, a taxpayer must show that the failure to file timely returns occurred despite the exercise of ordinary business care and prudence, or that cause existed as would

² Although OTA lacks jurisdiction to adjust a final tax liability based on financial hardship, FTB may consider appellant's inability to pay under its payment arrangement or offer in compromise programs. (See <https://www.ftb.ca.gov/pay/if-you-cant-pay/index.html>.)

prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of Head and Feliciano*, 2020-OTA-127P.)

Appellant's 2018 return was due on April 15, 2019. As of the filing date of this appeal, appellant has failed to file a tax return with FTB for the 2018 tax year. Appellant has not provided any documentation or other corroborating evidence to support a finding that appellant's failure to timely file the 2018 California tax return occurred despite exercising ordinary business care and prudence. (*Appeal of Head and Feliciano*, *supra*.) Accordingly, OTA finds no basis to abatement the penalty.

HOLDINGS

1. Appellant has not demonstrated error in FTB's proposed assessment of tax.
2. Appellant has not established reasonable cause to abate the late filing penalty for the 2018 tax year.

DISPOSITION

FTB's action is sustained.

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Eddy Y.H. Lam

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Eddy Y.H. Lam

Administrative Law Judge

Date Issued: 11/9/2022