

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
R. SANTOS

) OTA Case No. 21078253
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OPINION

Representing the Parties:

For Appellant: R. Santos

For Respondent: Phillip C. Kleam, Tax Counsel III

A. WONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, R. Santos (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$1,083.00, a late-filing penalty of \$270.75, and applicable interest, for the 2018 tax year.

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

ISSUE

Whether appellant has shown error in FTB’s proposed assessment.¹

FACTUAL FINDINGS

1. Appellant, a California resident, did not file a California income tax return for the 2018 tax year.
2. FTB received information reported by employers and a brokerage firm that appellant had received wages and income totaling \$43,671.00 in 2018, which would have required appellant to file a return. Subsequently, FTB requested that appellant file a return or explain why filing one was not required.

¹ Appellant does not specifically contest the late-filing penalty or request abatement of interest, so OTA will not specifically address them.

3. Appellant did not file a return or otherwise respond to FTB's request.
4. FTB issued to appellant a Notice of Proposed Assessment (NPA), which estimated appellant's income to be \$43,671.00. Based on this income, and after a deduction and credit, the NPA proposed a net tax liability of \$1,083.00 and a late-filing penalty of \$270.75, plus applicable interest.
5. Appellant protested the NPA, but did not explain why he was protesting.
6. FTB issued a Notice of Action, which affirmed its NPA.
7. This timely appeal followed.

DISCUSSION

R&TC section 17041(a)(1) imposes a tax upon the entire taxable income of every resident of this state. R&TC section 18501(a) requires every individual subject to the Personal Income Tax Law 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 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 of additional tax based on an estimate of income, FTB'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, FTB received information reported by appellant's employers and brokerage firm indicating that appellant had received wages and income totaling \$43,671.00 in 2018, and proposed an assessment based on this information. OTA concludes that FTB has met its initial burden of establishing that its proposed assessment is reasonable and rational.

Once FTB has met its 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 the evidence means that the taxpayer must establish by documentation or other evidence that the circumstances he or she asserts are more likely than not to be correct. (*Appeal of Estate 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 the party’s case. (*Appeal of Bindley, supra.*)

In his appeal, appellant does not actually contest the proposed assessment, but only states that he is unemployed and cannot pay the tax liability of \$1,083.00 at one time. Appellant asks to be allowed to research payment plans or FTB’s Offer in Compromise program.²


Because appellant has not provided any evidence—or even asserted—that FTB’s proposed assessment is wrong, OTA concludes that appellant has not carried his burden of showing error in FTB’s proposed assessment.

HOLDING


Appellant has not shown error in FTB’s proposed assessment.


DISPOSITION

OTA sustains FTB’s action.

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Andrew Wong
Administrative Law Judge

We concur:

DocuSigned by:

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Kenneth Gast
Administrative Law Judge

DocuSigned by:

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Richard Tay
Administrative Law Judge

Date Issued: 11/28/2022

² Because of appellant’s stated interest in resolving this matter, during the briefing process, OTA provided appellant with the contact information for FTB’s Settlement Bureau and Offer in Compromise Unit and suggested that appellant contact them directly. According to FTB’s submissions, FTB twice attempted to contact appellant regarding his request for an offer in compromise, but appellant failed to return FTB’s voicemail messages.