

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
J. EVANS

) OTA Case No. 21088404
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OPINION

Representing the Parties:

For Appellant: J. Evans
For Respondent: Brian Werking, Tax Counsel III
For Office of Tax Appeals: Danielle Pegan, Graduate Student Assistant

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, J. Evans (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$865.00, late-filing penalty of \$216.25, and applicable interest, for the 2018 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 of tax for the 2018 tax year.
- 2. Whether appellant demonstrated reasonable cause for filing the 2018 tax return late.

FACTUAL FINDINGS

- 1. FTB received information that appellant earned \$57,317 from Team Industrial Services, Inc., a Texas corporation, while residing in California, requiring appellant to file a 2018 California tax return. FTB issued a Request for Tax Return (Request) on November 10, 2020.

2. Appellant did not respond to the Request. FTB subsequently sent a Notice of Proposed Assessment (NPA) on February 12, 2021, reporting an estimated tax liability of \$865.00 (after applying withholding credits), a late-filing penalty of \$216.25, and additional interest.
3. In response to the NPA, appellant returned a Quick Resolution Worksheet protesting the tax but did not attach supporting documentation.
4. FTB affirmed the NPA and issued a Notice of Action (NOA) when appellant still did not file a 2018 tax return.
5. Appellant filed this timely appeal, contesting the NOA on the grounds that he earned his wages for performing work mostly in Illinois during the 2018 tax year, and that he already paid taxes to Illinois on this income.
6. In response, FTB stated that appellant may file his 2018 tax return and claim and other state tax credit (OSTC) for taxes paid to Illinois. At the time of this appeal, appellant has not filed a 2018 tax return.

DISCUSSION

Issue 1: Whether appellant has shown error in FTB’s proposed assessment of tax for the 2018 tax year.

R&TC section 17041(a)(1) imposes a tax on the entirety of a California resident’s income for each tax year. Except as otherwise provided, R&TC section 17073 incorporates Internal Revenue Code (IRC) section 63(a), which defines “taxable income” as “gross income minus . . . [applicable] deductions.” Gross income is further defined as “income from whatever source derived,” including compensation for services. (IRC, § 61(a).) Under R&TC section 18501, California residents are required to submit tax returns to FTB if an individual earns over a certain threshold. A resident under R&TC section 17014(a) includes: (1) every individual who is in California for other than a temporary or transitory purpose; or (2) every individual domiciled in California who is outside California for a temporary or transitory purpose. Every individual subject to the Personal Income Tax Law must 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” in excess of filing thresholds. (R&TC, § 18501(a)(1)-(4).) If a 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 tax assessment based on an estimate of income, FTB has the initial burden to show that 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.*) Once FTB has met its initial burden, the proposed assessment of additional tax is presumed correct, and the taxpayer has the burden of proving it wrong. (*Ibid.*)

To prevent double taxation, R&TC section 18001(a) allows a California resident to claim an OSTC against the California net tax for net income taxes imposed by and paid to another state on income derived from sources within that state. It is noted that no credit will be allowed for income taxes imposed by another state until such taxes are actually paid. (Cal. Code Regs., tit. 18, § 18001-1(b).) Receipts showing the payment of such taxes, and a certified copy of the return or returns upon the basis of which such taxes are assessed must be filed with FTB at or prior to the time credit is claimed. (*Ibid.*) To claim the OSTC, appellant must file a 2018 return.

Appellant contends that most of his income was earned in Illinois and that he paid taxes to that state. However, appellant has not provided any evidence to support his contentions, such as Illinois income tax documents or receipts showing travel and business in Illinois. Even if appellant submitted evidence showing that he worked in Illinois, appellant does not dispute that he was a California resident during the 2018 tax year. Appellant received wages and answered mail from the FTB at his Downey, CA address. All California residents who earn wages out-of-state are required to file tax returns pursuant to R&TC section 17041(a)(1). Appellant has not shown that FTB’s tax assessment is erroneous or that appellant does not owe the tax.

As to the question of double taxation, OTA notes that the OSTC generally allows for a credit on taxes paid in other states, which prevents the occurrence of double taxation. However, appellant has not provided any evidence that he is entitled to a credit for taxes paid to another state, or even claimed the OSTC on a 2018 Form 540. Appellant’s unsupported assertions are not sufficient to satisfy his burden of proof. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) Thus, appellant has not shown error in FTB’s proposed assessment of tax for the 2018 tax year.

Issue 2: Whether appellant has demonstrated reasonable cause for filing the 2018 return late.

R&TC section 19131(a) imposes a late-filing penalty on a taxpayer who fails to file a return by either the due date or the extended due date unless it is shown that the failure was due to reasonable cause and not willful neglect. When FTB imposes a penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) The taxpayer bears the responsibility of establishing reasonable cause. (*Appeal of Belcher*, 2021-OTA-284P.) To establish reasonable cause, the taxpayer must show that the failure to file timely returns occurred despite the exercise of ordinary business care and prudence, or that such cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of Head and Feliciano*, 2020-OTA-127P.)


Appellant asserts that Team Industrial Services, Inc. “messed up” his W-2 forms and cannot help him alleviate the situation. Appellant also argues that he would be subject to double taxation if he pays taxes in California on wages he earned in Illinois. As discussed above, California residents are required to pay tax on all income from whatever source derived. Appellant may have also been eligible for the OSTC if he filed his 2018 Form 540 and produced sufficient evidence that shows he paid income tax to Illinois as a California resident. Although appellant may have had a sincere belief that he was not required to file a return in California, that belief alone does not constitute reasonable cause for the failure to file a timely return. (*Appeal of Cremel and Koepfel*, 2021-OTA-222P.) Ignorance of the law is not reasonable cause for the failure to comply with statutory requirements. (*Ibid.*) Accordingly, appellant has not established reasonable cause to abate the late-filing penalty.

HOLDINGS

1. Appellant has not shown error in FTB’s proposed assessment of tax for the 2018 tax year.
2. Appellant has not established reasonable cause for filing the 2018 tax return late.


DISPOSITION

FTB’s action is sustained.


DocuSigned by:


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 Keith T. Long
 Administrative Law Judge

We concur:

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 Ovsep Akopchikyan
 Administrative Law Judge

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 Tommy Leung
 Administrative Law Judge

Date Issued: 12/7/2022