

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
M. CLOUSE

) OTA Case No. 220610653
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OPINION

Representing the Parties:

For Appellant: M. Clouse
J. Clouse, Spouse¹

For Respondent: Eric R. Brown, Tax Counsel III

For Office of Tax Appeals: Nguyen Dang, Tax Counsel III

O. AKOPCHIKYAN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, M. Clouse (appellant) appeals an action by Franchise Tax Board (respondent) proposing additional tax of \$2,197.00, a late filing penalty of \$549.25, and applicable interest for the 2017 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 this matter based on the written record.

ISSUE

Whether appellant has shown error in respondent’s proposed assessment for the 2017 tax year.

¹ Although appellant’s appeal letter lists J. Clouse as a taxpayer, J. Clouse is not a party to this appeal because respondent issued the Notice of Action to M. Clouse only.

FACTUAL FINDINGS

1. During the 2017 tax year, appellant operated a rubber stamp business.
2. Appellant did not file a California income tax return for the 2017 tax year.
3. Respondent obtained information from the IRS (i.e., amounts reported on IRS Form 1099-K) indicating that appellant received income in 2017 from electronic payments processed by Wells Fargo Merchant Services, LLC (Wells Fargo) totaling \$58,690.
4. Respondent issued a Notice of Proposed Assessment (NPA) to appellant in which respondent computed a proposed tax deficiency based on this information, a single-filing status and the standard deduction, and imposed a late filing penalty and applicable interest.
5. Appellant protested the proposed deficiency assessment and respondent issued a Notice of Action affirming the NPA.
6. This timely appeal followed.

DISCUSSION

Appellant argues that respondent's proposed assessment is overstated because it fails to account for the numerous expenses appellant paid while operating a rubber stamp business, including those for materials, labor, supplies, advertising, website, vehicle, and home office. Appellant further asserts that appellant is married, and that appellant and appellant's spouse (the couple) are senior citizens living below the poverty line and lack the financial ability to pay the proposed amount owed.

It is well established that respondent's determinations based upon third-party information reporting, such as the IRS Form 1099-K relied upon by respondent here, are presumed correct and that appellant has the burden of proving error. (*Appeal of Bindley*, 2019-OTA-179P.) Appellant also bears the burden of establishing entitlement to any claimed expense deductions. (*Appeal of Dandridge*, 2019-OTA-458P.)

Appellant has not provided any evidence to show that appellant did not receive the income reported on IRS Form 1099-K by Wells Fargo or that appellant incurred any business-related expenses for the 2017 tax year. While it is likely that appellant would have incurred some expenses in connection with the income received, without credible evidence from which a

reasonable approximation may be made, OTA is unable to adjust appellant's liability to account for these expenses. (*Vanicek v. Commissioner* (1985) 85 T.C. 731, 743 [generally, courts will not estimate a deductible expense absent some basis upon which an estimate can be made].)

To the extent appellant disagrees with respondent's use of a single-filing status in computing the proposed deficiency, OTA notes that respondent is not required, nor is it able to, make a joint filing status election on behalf of the taxpayer. (*Salzer v. Commissioner*, T.C. Memo. 2014-188 [joint filing status cannot be imputed and taxpayers can secure such status only by filing a joint return]; R&TC, § 18521; IRC, § 6013.)² In other words, to obtain the benefit of having their tax liability computed using the more favorable rates available to married individuals filing jointly, the couple must file a joint tax return, which they have not done.

Finally, while respondent may settle tax debts owed to the state based on a taxpayer's ability to pay under its Offer in Compromise program, OTA is unable to "make discretionary adjustments to the amount of a tax assessment based on a taxpayer's ability to pay." (*Appeal of Robinson*, 2018-OTA-059P.)

HOLDING

Appellant has not shown error in respondent's proposed assessment for the 2017 tax year.

DISPOSITION

Respondent's action is sustained.

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Ovsep Akopchikyan
Administrative Law Judge

Date Issued: 1/6/2023

² IRC is an abbreviation for Internal Revenue Code.