

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:

**D. PAE**

) OTA Case No. 220410082  
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**OPINION**

Representing the Parties:

For Appellant:

D. Pae

For Respondent:

Camille Dixon, Tax Counsel

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, D. Pae (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$4,706.00, a late-filing penalty of \$1,176.50, 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 for the 2018 tax year.
2. Whether appellant has established reasonable cause to abate the late-filing penalty for the 2018 tax year.

**FACTUAL FINDINGS**

1. Appellant has not filed a tax return for the 2018 tax year.
2. FTB obtained a wage and income transcript from the IRS showing that appellant received Form 1099-MISC income in the amount of \$85,764 from Superteam, Inc., which prompted a return-filing requirement for the 2018 tax year.
3. Based on evidence that appellant received income from Superteam, Inc., FTB issued appellant a Request for Tax Return. Appellant responded stating he received no income

in 2018, but did receive financial assistance from appellant's parent, spouse's parent, and friends.

4. FTB issued a Notice of Proposed Assessment (NPA) proposing tax of \$4,706.00, a \$1,176.50 late-filing penalty, and applicable interest.
5. Appellant protested the NPA, explaining that the money received from Superteam, Inc. was a loan that was repaid and there was a mistake made on the part of the accountant after appellant left the company.
6. FTB issued a Notice of Action affirming the NPA.
7. This timely appeal followed.

### DISCUSSION

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

If a taxpayer fails to file a return, then 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).) FTB may estimate income when a taxpayer fails to file a return or provide the information necessary to ascertain their tax liability. (*Appeal of Bindley*, 2019-OTA-179P.) If FTB proposes a tax assessment based on an estimate of income, then FTB's initial burden is to show that its proposed assessment is reasonable and rational. (*Ibid.*) 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, FTB's proposed assessment is presumed correct, and the taxpayer has the burden of proving that the assessment is incorrect. (*Ibid.*) FTB's determination must be upheld in the absence of credible, competent, and relevant evidence showing error in its determination. (*Ibid.*)

Here, FTB estimated appellant's income based on third-party income information when appellant did not file a 2018 tax return. The wage and income transcript from the IRS showed that appellant received Form 1099-MISC income in the amount of \$85,764 from Superteam, Inc. Every individual who has gross income or adjusted gross income that exceeds the minimum income thresholds must file a tax return. (R&TC, § 18501(a)-(c).)<sup>1</sup> FTB provided the IRS wage and income transcript, which is reliable evidence into the record to show appellant received

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<sup>1</sup> FTB annually recomputes the filing threshold amounts to account for, among other things, inflation. (R&TC, § 18501(d).)

sufficient gross income to trigger a filing requirement. As appellant did not file a return, FTB used the information from Superteam, Inc. to estimate appellant's California-derived net income and timely issued the NPA. The Office of Tax Appeals finds that FTB has introduced a minimal factual foundation supporting its proposed assessment and shown why it is reasonable and rational. Accordingly, FTB has met its initial burden of proof and appellant has the burden of proving FTB's proposed assessment is incorrect.

Appellant argues that FTB's proposed assessment is not correct because appellant quit working at Superteam, Inc. in 2018 and the money he received from it was a loan that was "paid back." Appellant also states that the company went bankrupt and accounting mistakes were made by the accountant at the company. However, appellant has not provided any evidence to support these assertions, such as emails to and from Superteam, Inc., bank statements, loan documents, or copies of checks to Superteam, Inc. showing the income was a loan and payments were made back. Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of Wright Capital Holdings LLC*, 2019-OTA-219P.) FTB's determinations cannot be successfully rebutted when taxpayers fail to provide credible, competent, and relevant evidence as to the issues in dispute. (*Ibid.*) Therefore, appellant has not established error in FTB's 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 failing to file a required return on or before the due date, unless the taxpayer shows that the failure is due to reasonable cause and not due to willful neglect. (R&TC, § 19131.) Tax returns for calendar year taxpayers are due on or before April 15 following the close of the calendar year. (R&TC, § 18566.) FTB automatically grants a six-month extension to file a tax return if the tax return is filed within six months from the original due date. (Cal. Code Regs., tit. 18, § 18567.) The late-filing penalty is calculated at five percent of the tax for each month or fraction of each month the return is late (determined without regard to any extension of time for filing), with a maximum penalty of 25 percent of the tax due. (R&TC, § 19131(a).) To establish reasonable cause for abating the late-filing penalty, the taxpayer must show that the failure to file a timely return occurred despite the exercise of ordinary business care and prudence or that such cause existed as would prompt an ordinarily

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

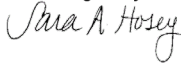
Here, because appellant earned gross income above the minimum filing threshold, appellant was required to file a 2018 tax return by April 15, 2019. However, appellant has not filed a tax return. As a result, FTB imposed and calculated the late-filing penalty as \$1,176.50 (\$4,706 x 25 percent). Accordingly, FTB properly imposed and calculated the late-filing penalty. Appellant does not allege that there was reasonable cause for the failure to file the tax return; rather, appellant states a return was not required to be filed because he did not receive any income in 2018. Appellant does not provide a basis to find that the failure to file a timely return occurred despite the exercise of ordinary business care and prudence, or that cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of Auburn Old Town Gallery, LLC*, 2019-OTA-319P.) Therefore, appellant has not established reasonable cause to abate the late-filing penalty.

HOLDINGS


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

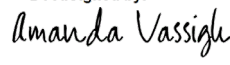
DISPOSITION

FTB’s action is sustained in full.

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 Sara A. Hosey  
 Administrative Law Judge

We concur:

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 Suzanne B. Brown  
 Administrative Law Judge

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 Amanda Vassigh  
 Administrative Law Judge

Date Issued: 11/17/2022