

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**K. HENDERSON**

) OTA Case No. 21037406  
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**OPINION**

Representing the Parties:

For Appellant: K. Henderson

For Respondent: Joel Smith, Tax Counsel III

R. TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, K. Henderson (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$7,799.65 for the 2014 tax year.

Office of Tax Appeals (OTA) Administrative Law Judges Richard Tay, Sara A. Hosey, and Daniel K. Cho held an oral hearing for this matter in Cerritos, California, on June 16, 2022. After the hearing, OTA requested additional briefing from the parties. At the conclusion of the briefing period, OTA closed the record and submitted this matter for an opinion.

**ISSUE**

Whether appellant has shown error in respondent’s claim for refund denial for the 2014 tax year.

**FACTUAL FINDINGS**

1. Appellant did not file a timely 2014 California income tax return.
2. Respondent received information from the IRS that appellant and appellant’s former spouse filed a federal income tax return, married filing jointly, with a California address.
3. Respondent sent appellant a request for tax return on April 26, 2016, but received no response. Respondent then issued a Notice of Proposed Assessment based on appellant’s federal income tax return information. The federal account information that respondent

- provided on appeal shows that appellant and her ex-spouse reported wages and self-employed income.
4. After respondent's proposed assessment went final, respondent initiated collection action for appellant's outstanding tax liability. Between August 11, 2017, and April 6, 2021, respondent received payments in satisfaction of appellant's tax liability.
  5. Appellant filed a 2014 California income tax return on July 8, 2019, but filed as single, instead of married filing jointly. Appellant also reported only her wages, and did not include the self-employed income or her ex-spouse's income.
  6. Respondent rejected appellant's return because the filing status did not match that on her federal income tax return.
  7. Appellant then filed an amended California income tax return on September 6, 2020, with the filing status married filing separately. The only amendment appellant made was to her filing status. Because the filing status still did not match appellant's federal income tax return, respondent rejected appellant's amended return.
  8. However, respondent treated appellant's amended California income tax return as a claim for refund. Respondent denied the claim for refund on December 10, 2020, on the grounds that appellant's filing status on the amended return is not the same as the filing status on appellant's federal income tax return.<sup>1</sup>
  9. This timely appeal follows.

### DISCUSSION

The first question in this appeal is whether respondent erred in its denial of appellant's claim for refund. OTA finds respondent did improperly deny appellant's claim for refund as the basis of respondent's denial is not supported by R&TC section 19322. The second question is whether appellant has shown she is entitled to a refund. On appeal, appellant provided information and testimony showing that respondent's income estimate was accurate; thus, although respondent erred in its reasoning to deny her claim for refund, appellant has not met her burden to show she is entitled to a refund.

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<sup>1</sup> Appellant's amended return should have been treated as an informal claim for refund under R&TC section 19322.1, which was not perfected until appellant's final payment on April 6, 2021. It is not clear from the record why respondent issued a claim for refund denial prematurely on an informal claim for refund. OTA acknowledges appellant has since perfected her claim, and for purposes of this appeal, OTA will treat respondent's claim for refund denial as sufficient to grant OTA jurisdictional authority.

Respondent denied appellant's claim for refund because the filing status on appellant's amended return<sup>2</sup> (married filing separately) did not match that on her federal 2014 income tax return (married filing jointly). As the basis for its denial, respondent cites R&TC section 18521, which requires taxpayers to use the same filing status on their California income tax return as that of their federal income tax return. However, in relying on R&TC section 18521, respondent imposes the requirements for a valid income tax return on appellant's claim for refund. There is no requirement that a claim for refund, even if the claim is made on an income tax return form, meet the requirements of a valid income tax return filing. In fact, the requirements of a valid claim for refund are less onerous. (See *Appeal of Reed*, 2021-OTA-326P [a zero return was not a valid return, but alongside a written statement, constituted a valid claim for refund].)

R&TC section 19322 states three requirements for a valid claim for refund: that a claim for refund be in writing, signed by the taxpayer or the taxpayer's representative and state the specific grounds upon which it is founded. The purpose of the statutory requirements is to ensure respondent receives sufficient notice of the claim and its basis. (*Wertin v. Franchise Tax Bd.* (1998) 68 Cal.App.4th 961, 977.) Although appellant's July 8, 2019 return is not a valid income tax return filing, it was still a valid refund claim - it was in writing, signed by the taxpayer and stated the grounds upon which the claim was founded. Moreover, it met the purpose of the statutory requirements by giving respondent sufficient notice of the claim and its basis.

We find appellant's failure to file a valid income tax return is also not solely a basis to reject appellant's claim that she is entitled to a refund. (See *Appeal of MJK Real Estate Fund II, LLC*, 2022-OTA-247P.) After a taxpayer files a claim for refund, respondent "has the opportunity to reevaluate its position, [and] reach the correct result." (*J.H. McKnight Ranch, Inc. v. Franchise Tax Bd.* (2003) 110 Cal.App.4th 978, 986.) Here, respondent did not reevaluate its position or attempt to reach the correct substantive result. Rather, it denied appellant's claim for refund for an administrative misstep. Thus, OTA finds respondent erred in rejecting appellant's claim for refund for failure to meet the requirements of filing a valid income tax return, as appellant met the statutory requirements of a proper claim for refund pursuant to R&TC section 19322.

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<sup>2</sup> Respondent did not treat appellant's July 8, 2019 attempted income tax return filing as an informal claim for refund. Respondent's basis for not doing so is not clear from the record.

Having found appellant filed a valid claim for refund, OTA must now decide whether appellant is entitled to a refund. R&TC section 17041 imposes a tax “upon the entire taxable income of every resident of this state” and upon the entire taxable income of every nonresident or part-year resident, which is derived from sources in this state. R&TC section 18501 requires every individual subject to the Personal Income Tax Law (R&TC, § 17001, et seq.) to make and file a return with respondent “stating specifically the items of the individual’s gross income from *all* sources and the deductions and credits allowable.” (Emphasis added.) Here, appellant does not dispute she is subject to the California Personal Income Tax Law, as she reported wages on the 2014 California income tax return she attempted to file. Although appellant wrote in her appeal that she would file a valid 2014 California income tax return, there is no evidence in the record she has done so.

If a taxpayer fails to file a return, respondent may make an estimate of their net income, from any available information, and may propose to assess the amount of tax, interest, and penalties due. (R&TC, § 19087(a).) If respondent proposes a tax assessment based on an estimate of income, respondent’s initial burden is to show why its proposed assessment is reasonable and rational. (*Appeal of Bindley*, 2019-OTA-179P.) When a taxpayer fails to file a valid return and refuses to cooperate in the ascertainment of his or her income, respondent is given “great latitude” in estimating income. (*Appeal of Bindley*, 2019-OTA-179P.)

Furthermore, when a taxpayer fails to file a valid return, respondent’s use of income information from various sources to estimate a taxpayer’s taxable income is a reasonable and rational method of estimating taxable income. (*Palmer v. Internal Revenue Service* (9th Cir. 1997) 116 F.3d 1309, 1313.) Indeed, federal courts have held that the taxing agency need only introduce some evidence linking the taxpayer with the unreported income. (*Rapp v. Commissioner* (9th Cir. 1985) 774 F.2d 932, 935.) Respondent’s income estimate was based on information it received from the IRS regarding income amounts appellant and appellant’s ex-spouse reported on their federal income tax return.<sup>3</sup> Respondent’s use of that information is sufficient evidence to support their estimate, and thus, respondent has met its initial burden.

Once respondent has met its initial burden, its proposed assessment is presumed correct, and the taxpayer has the burden of proving it to be wrong. (*Appeal of Jali, LLC*, 2019-OTA-

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<sup>3</sup> It is not clear from the screenshots respondent provided on appeal that the source of the information respondent used to estimate appellant’s income is reliable. However, respondent provided additional information on appeal that reliably supports respondent’s income estimate, as discussed below.

204P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Gorin*, 2020-OTA-018P.) A taxpayer's failure to produce evidence that is within his control gives rise to a presumption that such evidence is unfavorable to his case. (*Appeal of Morosky*, 2019-OTA-312P.) Indeed, "a taxpayer is not in a good position to criticize respondent's estimate of his or her liability when he or she fails to file a required return and, in addition, subsequently refuses to submit information upon request." (*Appeals of Fred R. Dauberger, et al.* (82-SBE-082) 1982 WL 11759.)

On appeal, appellant provided her 2014 W-2 and testimony regarding the wages she received in 2014. She has not provided any additional information regarding her ex-spouse's income, despite the fact that appellant and appellant's ex-spouse both reported their income on their 2014 federal income tax return. The information appellant provided on appeal does not show error in respondent's income estimate. Appellant argues she did not owe any tax based on her wages; however, each spouse is jointly and severally liable for the entire tax due when a couple files a joint return. (R&TC, § 19006(b).) Moreover, appellant's federal income tax transcript, and appellant's and appellant's ex-spouse's wage and income transcripts also support respondent's income estimate. OTA finds no error in the record that shows respondent's income estimate was inaccurate. Thus, appellant has not met her burden.<sup>4</sup>

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<sup>4</sup> Because of OTA's findings above, the statute of limitations issue discussed at the hearing is moot and will not be discussed.

HOLDING


Appellant has not shown she is entitled to a refund of taxes paid for the 2014 tax year.

DISPOSITION

Respondent’s action is sustained in full.

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Richard Tay  
Administrative Law Judge

We concur:

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Sara A. Hosey  
Administrative Law Judge

DocuSigned by:  
  
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Daniel K. Cho  
Administrative Law Judge

Date Issued: 3/10/2023