

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**D. MONTALVO**

) OTA Case No. 22039999  
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**OPINION**

Representing the Parties:

For Appellant: D. Montalvo

For Respondent: AnaMarija Antic-Jezildzic, Specialist

J. ALDRICH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, D. Montalvo (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$912, a late-filing penalty of \$228, 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 proven error in FTB’s proposed assessment of tax.
- 2. Whether appellant has shown reasonable cause to relieve the late-filing penalty.

**FACTUAL FINDINGS**

- 1. Appellant has not filed a California personal income tax return for the 2018 tax year.
- 2. FTB obtained information that the IRS received a Form 1099-Miscellaneous (1099-Misc) from Edwards Solutions, LLC, reporting non-employee compensation income of \$40,387 under appellant’s name and social security number.
- 3. On June 22, 2021, FTB issued a Request for Tax Return, with a response deadline of July 28, 2021. Appellant did not reply.

4. On November 12, 2021, FTB issued a Notice of Proposed Assessment (NPA), showing a proposed amount due of \$1,281.01 (tax of \$912.00,<sup>1</sup> a late-filing penalty of \$228.00,<sup>2</sup> and accrued interest). The NPA established a response deadline of January 11, 2022.
5. On December 15, 2021, appellant filed a protest of the NPA, disputing the accuracy of the information provided by Edwards Solutions, LLC.
6. On February 14, 2022, FTB issued a Notice of Action affirming the amounts due, as shown on the NPA (tax of \$912, a late-filing penalty of \$228, and accrued interest).
7. This timely appeal followed.

### DISCUSSION

#### Issue 1: Whether appellant has proven error in FTB's proposed assessment of tax.

California imposes a tax on the entire taxable income of a resident.<sup>3</sup> (R&TC, § 17041(a)(1).) R&TC section 18501 requires every individual subject to Personal Income Tax Law is required to make and file a return with the FTB, “stating specifically the items of the individual’s gross income from all sources and the deductions and credits allowable...” (R&TC, § 18501(a)(1)-(4).) 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.” (R&TC, § 19087(a).)

When FTB makes a proposed assessment 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 (*Bindley*).) 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 tax is presumed correct, and the taxpayer has the burden of proving it to be wrong. (*Ibid.*) The applicable burden of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(c).) Unsupported assertions are not sufficient to satisfy a taxpayer’s burden of proof. (*Bindley*,

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<sup>1</sup> FTB computed tax of \$1,030 using taxable income of \$35,986 (\$40,387 less a standard deduction of \$4,401). It then deducted exemption credits of \$118 to compute tax due of \$912.

<sup>2</sup> The late-filing penalty is 5 percent of the amount of tax for each month or fraction thereof from the original due date of the return until the return is filed, with a maximum of 25 percent (\$912 x 25 percent = \$228).

<sup>3</sup> Appellant’s California residency is not in dispute in this matter.

*supra.*) In the absence of credible, competent, and relevant evidence showing error in FTB's determination, the determination must be upheld. (*Ibid.*)

FTB asserts that appellant's gross income exceeded the filing threshold for the 2018 tax year. FTB states that the filing threshold for individuals was \$17,693 of gross income or \$14,154 of adjusted gross income for the 2018 tax year.<sup>4</sup> Appellant failed to file a 2018 California personal income tax return. FTB estimated appellant's 2018 income based on a Form 1099-Misc filed with IRS by Edwards Solutions, LLC. FTB's use of the Form 1099-Misc to estimate appellant's 2018 taxable income is both reasonable and rational. Thus, appellant has the burden to prove error in FTB's determination.

Here, appellant argues that he was not required to file a return because his income for 2018 was less than \$8,000, including less than \$5,000 from Edwards Solutions, LLC. On that basis, appellant argues that the income received for 2018 was less than the filing threshold. Appellant asserts that he worked for Edwards Solutions, LLC for only three months in January, February, and March of 2018. Appellant asserts that Edwards Solutions paid wages in cash, with the exception of the last payment of \$500 in April. In support, appellant provided copies of bank statements showing cash deposits totaling \$4,500 during the three-month period.

FTB argues that the evidence provided by appellant is not adequate to show that the amount of income reported by Edwards Solutions, LLC is incorrect. FTB notes that appellant has provided neither a California personal income tax return for 2018 nor a corrected Form 1099-Misc. As such, FTB argues that the evidence is insufficient to corroborate appellant's position.

Here, the income reported on the 1099-Misc is non-employee compensation, not wages. Appellant has not provided credible, competent, and relevant evidence that Edwards Solutions, LLC erroneously reported to IRS the payment of non-employee compensation to appellant for the 2018 tax year (e.g., an amended 1099-Misc). Thus, appellant has not shown that the information used by FTB to establish the amount of tax due was incorrect. OTA finds that no adjustment is warranted to the amount of tax assessed by FTB.

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<sup>4</sup> The record does not provide evidence of appellant's filing status or age. However, FTB refers in its brief to the filing threshold for a single individual, under 65 years of age, with no dependents.

Issue 2: Whether appellant has shown reasonable cause to relieve the late-filing penalty.

If a taxpayer fails to make and file a return on or before the due date of the return or the due date as extended by FTB, then, unless it is shown that the failure is due to reasonable cause and not due to willful neglect, FTB shall impose a late-filing penalty.<sup>5</sup> (R&TC, § 19131(a).) When FTB imposes a late-filing penalty, it is presumed to have been correctly imposed, and the burden of proof is on the taxpayer to show that reasonable cause exists to abate the penalty. (*Appeal of Xie*, 2018-OTA-076P.) To overcome the presumption of correctness, the taxpayer must provide credible and competent evidence supporting a claim of reasonable cause. (*Ibid.*) To establish reasonable cause, the taxpayer must show the failure to timely file occurred despite the exercise of “ordinary business care and prudence.” (*Appeal of Friedman*, 2018-OTA-077P.) Unsupported assertions are not sufficient to satisfy the taxpayer’s burden of proof. (*Appeal of Scanlon*, 2018-OTA-075P.)

Here, appellant did not file a California personal income tax return for the 2018 tax year. Appellant has not provided an explanation for his failure to file a timely return other than the argument, addressed above, that his income was less than the threshold amount requiring that a return be filed. As explained above, appellant has not shown error in FTB’s determination that appellant was required to file a return. Appellant has not shown reasonable cause for failing to file a timely tax return. Thus, OTA finds there is no basis to relieve the late-filing penalty.

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<sup>5</sup> FTB may grant an individual taxpayer up to six more months to file a tax return and the corresponding regulation provides for an automatic six-month extension without a written request. (R&TC, § 18567(a); Cal. Code Regs., tit. 18, § 18567.) However, if the return is not filed within six months of the original due date, no valid extension exists, and the late-filing penalty amount is computed by reference to the original due date of the return. (*Ibid.*)

HOLDINGS

1. Appellant has not proven error in FTB’s proposed assessment of tax.
2. Appellant has not shown reasonable cause to relieve the late-filing penalty.

DISPOSITION


FTB’s actions are sustained.

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Josh Aldrich  
 Administrative Law Judge

We concur:

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Huy “Mike” Le  
 Administrative Law Judge

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Ovsep Akopchikyan  
 Administrative Law Judge

Date Issued: 4/20/2023