

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
A. RUNNELS

) OTA Case No. 21108904
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OPINION

Representing the Parties:

For Appellant: A. Runnels

For Respondent: Brian Werking, Tax Counsel III

For Office of Tax Appeals: Neha Garner, Tax Counsel III

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, A. Runnels (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$4,296, a late filing penalty of \$1,074, 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 established error in FTB’s proposed tax assessment.
2. Whether appellant established a basis for abating the late filing penalty.

FACTUAL FINDINGS

1. Appellant did not file a California income tax return for 2018. FTB received wage information from the California Employment Development Department (EDD) showing that appellant received California wages in the amount of \$110,330 and California tax withholding of \$2,707 from HBADGER INC. FTB also received information showing that appellant received interest income of \$178 from a bank.

2. FTB issued a Request for Tax Return requiring appellant to respond by April 7, 2021. The record does not show any response from appellant.
3. FTB issued a Notice of Proposed Assessment (NPA) to appellant for the 2018 tax year. The NPA estimated appellant's taxable income as \$106,107, and after accounting for California withholding credits, a tax liability of \$4,296. The NPA also imposed a late filing penalty of \$1,074, and applicable interest.
4. Appellant timely protested the NPA. However, FTB issued a Notice of Action affirming the NPA.
5. This timely appeal followed.

DISCUSSION

Issue 1: Whether appellant established error in FTB's proposed tax assessment.

California residents are taxed upon their entire taxable income regardless of the source of that income. (R&TC, § 17041(a).) R&TC section 18501 requires every individual subject to the Personal Income Tax Law to 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," if the individual has gross income or adjusted gross income exceeding certain filing thresholds. (R&TC, § 18501(a)(1)-(4).)

R&TC section 19087(a) provides that if any taxpayer fails to file a return, FTB, at any time, "may make an estimate of the net income, from available information, and may propose to assess the amount of tax, interest, and penalties due." FTB's initial burden is to show that its proposed 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 this initial burden, the burden then shifts to the taxpayer to prove the proposed assessment is wrong. (*Ibid.*)

As noted previously, appellant did not file a 2018 return. FTB learned that she received California wages of \$110,330, California tax withholding of \$2,707, and 1099-interest income in the amount of \$178, which it used to estimate appellant's income. Based on that information, FTB determined that appellant had a tax return filing requirement. FTB's use of wage and income information to estimate appellant's income is reasonable and rational. (See *Appeal of*

Bindley, supra.) Therefore, the burden shifts to appellant to establish error in FTB’s determination.

Appellant argues that she is not subject to California income tax because: (1) she did not reside in the state of California; (2) she used her parent’s California address for her tax paperwork and checking account for convenience; (3) the corporation she received income from was not an entity in California; and (4) no services of any kind were used in California. It appears that appellant asserts that she is not a California resident; therefore, her entire taxable income is not subject to tax in California.

However, FTB’s determination of residency is presumptively correct, and the taxpayer bears the burden of showing error in FTB’s determination. (*Appeal of Bracamonte*, 2021-OTA-156P; *Appeal of Mazer*, 2020-OTA-263P.) The statutory definition of “resident” contains two alternative tests in determining residency: (1) an individual not domiciled in California is a California resident if the individual is in California “for other than a temporary or transitory purpose;” or (2) an individual domiciled in California is a California resident if the individual is outside of California only “for a temporary or transitory purpose.” (*Appeal of Mazer*, 2020-OTA-263P; R&TC, § 17014(a)(1)-(2).)

Here, appellant has not provided any evidence to support the assertion that she is not a resident of California by rebutting the two alternative tests as described above. Unsupported assertions are not sufficient to satisfy a taxpayer’s burden of proof. (*Appeal of Bindley, supra.*) Therefore, appellant has not provided any evidence showing error in FTB’s determination.

Issue 2: Whether appellant established a basis for abating the late filing penalty.

California imposes a penalty for failing to file a 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.) When FTB imposes a penalty, it is presumed to have been imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) A taxpayer may rebut this presumption by providing credible and competent evidence supporting abatement of the penalty for reasonable cause. (*Ibid.*)

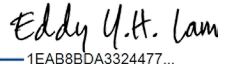
Appellant did not file a 2018 return. Appellant argues that she has no filing requirement and does not owe tax. However, OTA has determined that appellant had sufficient income to require her to file a return for the 2018 tax year and she provides no evidence establishing the penalty was improperly imposed or that she had reasonable cause for the failure to timely file a return. Therefore, the late filing penalty may not be abated.

HOLDINGS

1. Appellant has not established error in FTB’s proposed tax assessment.
2. Appellant has not established a basis for abating the late filing penalty.


DISPOSITION

FTB’s action is sustained.

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Eddy Y.H. Lam
 Administrative Law Judge

We concur:

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Sara A. Hosey
 Administrative Law Judge

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Huy “Mike” Le
 Administrative Law Judge

Date Issued: 7/24/2023