

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**M. SCRIPTER**

) OTA Case No. 221011649  
)  
)  
)  
)

**OPINION**

Representing the Parties:

For Appellant: M. Scriptor

For Respondent: Eric R. Brown, Tax Counsel III

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, M. Scriptor (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$1,029.00, a late filing penalty of \$226.75, a demand to file penalty (demand penalty) of \$226.75, a filing enforcement fee of \$97.00, and applicable interest for the 2019 tax year.

Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

**ISSUES**

1. Has appellant shown error in FTB’s proposed assessment of tax and penalties for the 2019 tax year?
2. Should a frivolous appeal penalty be imposed against appellant under R&TC section 19714?

**FACTUAL FINDINGS**

1. Appellant has not filed a California income tax return since the 2012 tax year. On his 2019 federal income tax return, appellant lists his address in Newbury Park, California.
2. Through FTB’s Integrated Non-Filer Compliance program, FTB obtained information that appellant had received income in 2019 from Northern Trust and JP Morgan Chase

- Bank, N.A. FTB issued a Demand for Tax Return, requiring appellant to respond by filing a return, providing a copy of a 2019 tax return previously filed, or explaining why a return was not required for the 2019 tax year.
3. FTB received correspondence from appellant, providing several frivolous arguments as to why he is not subject to taxation by the State of California. Appellant did not deny receiving the income reported by the third parties, but rather argued that he has no obligation to file a tax return based on the United States (U.S.) and California Constitutions, federal and California statutes, and federal and California case law.
  4. FTB issued a Notice of Proposed Assessment (NPA) for the 2019 tax year, in which FTB estimated appellant's income and proposed a tax liability, a late filing penalty, a demand penalty, a filing enforcement fee, and applicable interest.
  5. Appellant protested the NPA.
  6. FTB sent a Notice of Action, affirming the NPA. The Notice of Action notified appellant that he may be subject to the frivolous appeal penalty pursuant to R&TC section 19714.
  7. Appellant timely filed this appeal.

### DISCUSSION

#### Issue 1: Has appellant shown error in FTB's proposed assessment of tax and penalties for the 2019 tax year?

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 any 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 based on an estimate of income 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.*)

R&TC sections 17071 and 17072 define “gross income” and “adjusted gross income” by referring to and incorporating Internal Revenue Code (IRC) sections 61 and 62, respectively, into California law. IRC section 61 states that, unless otherwise provided, gross income means all income from whatever source derived. (*Commissioner v. Glenshaw Glass Co.* (1955) 348 U.S. 426, 476.)

Appellant did not file a 2019 return. FTB received information from third party payors, which indicated that appellant received income from the third parties during the 2019 tax year. FTB used this information to estimate appellant’s income. Based on this information, FTB determined that appellant had a 2019 return filing requirement. Appellant does not dispute that he received this income. Therefore, appellant must include this income as part (or all) of his gross income, pursuant to IRC section 61. (See also *Appeal of Balch*, 2018-OTA-159P.) Accordingly, FTB’s use of the third-party information it received to estimate appellant’s income is reasonable and rational.

In this appeal, appellant provides frivolous arguments to support his unfounded theory that he is not subject to tax because he believes only those who have income related to official federal government work are subject to income tax. In addition, appellant argues that FTB’s actions are not in compliance with the U.S. Constitution Bill of Rights and FTB is also in breach of contract by failing to provide testimony. Appellant also asserts that he is a citizen of California, and not a citizen or resident of the U.S. and has no income connected to a trade or business and, therefore, is not liable for any income tax. Frivolous arguments such as these do not establish that appellant was not required to report his income. (See *Appeal of Balch, supra.*) Appellant does not provide any non-frivolous argument or evidence establishing error in FTB’s determination. Therefore, appellant has not met his burden of showing error in FTB’s determination.

Appellant also provides no argument or evidence to support abatement of the penalties, fees or interest included in the NPA; rather, appellant focuses on the frivolous arguments mentioned above that he is not subject to income tax in general. Accordingly, the Office of Tax Appeals (OTA) finds no basis to abate penalties, fees, or interest in this appeal.

Issue 2: Should a frivolous appeal penalty be imposed against appellant under R&TC section 19714?

R&TC section 19714 provides, as relevant here, that a penalty of up to \$5,000 shall be imposed whenever it appears that proceedings before OTA have been instituted or maintained primarily for delay, or that the appellant’s position is frivolous or groundless. (*Appeal of Balch, supra.*) California Code of Regulations, title 18, (Regulation) section 30217(a) provides, as relevant here, that OTA shall impose a frivolous appeal penalty pursuant to R&TC section 19714 “[i]f a Panel determines that a franchise or income tax appeal is frivolous or has been filed or maintained primarily for the purpose of delay.” Regulation section 30217(b) lists the following nonexclusive factors to be considered in determining whether, and in what amount, to impose a frivolous appeal penalty: (1) whether the appellant is making arguments that OTA, in a precedential Opinion, or the State Board of Equalization (BOE), in a precedential Opinion, or courts have rejected; (2) whether the appellant is making the same arguments that the same appellant made in prior appeals; (3) whether the appellant submitted the appeal with the intent of delaying legitimate tax proceedings or the legitimate collection of tax owed; (4) whether the appellant has a history of submitting frivolous appeals or failing to comply with California’s tax laws; or (5) whether the appellant has been notified, in a current or prior appeal, that a frivolous appeal penalty may apply.

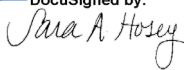
Appellant has not filed a California tax return since the 2012 tax year. Appellant’s arguments, such as that he is not a citizen of the U.S. and his income is not taxable because he is not involved in a trade or business within the U.S., are arguments that have been consistently rejected by the IRS, the courts, FTB, BOE, and OTA. (*See Appeal of Balch, supra.*) FTB notified appellant that it considered his arguments and positions to be frivolous in the Notice of Action. While OTA would be well within its authority to impose a frivolous appeal penalty in this case, there are mitigating factors, including that appellant has not submitted frivolous appeals to OTA in the past. Although OTA does not impose the frivolous appeal penalty in this proceeding, if appellant files additional appeals that raise similar frivolous arguments, such a penalty may be warranted pursuant to R&TC section 19714, up to the maximum of \$5,000 per appeal.

HOLDINGS


1. Appellant has not shown error in FTB’s proposed assessment of tax and penalties for the 2019 tax year.
2. A frivolous appeal penalty will not be imposed.

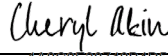
DISPOSITION

FTB’s action is sustained.

DocuSigned by:  
  
 6D3FE4A0CA514E7...  
 Sara A. Hosey  
 Administrative Law Judge

We concur:

DocuSigned by:  
  
 A11783ADD49442B...  
 Huy “Mike” Le  
 Administrative Law Judge

DocuSigned by:  
  
 1A8C8E38740B4D5...  
 Cheryl L. Akin  
 Administrative Law Judge

Date Issued: 8/21/2023