

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
**C. ELDRIDGE** ) OTA Case No. 221011698  
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**OPINION**

Representing the Parties:

For Appellant: C. Eldridge

For Respondent: Eric R. Brown, Attorney

For Office of Tax Appeals: Rachel Lucchini,  
Graduate Student Assistant

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, C. Eldridge (appellant) appeals an action by the Franchise Tax Board (respondent) proposing additional tax of \$1,637.00, a late filing penalty of \$409.25, and applicable interest for the 2015 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 respondent’s proposed additional tax assessment.
2. Whether the late filing penalty should be abated.
3. Whether a frivolous appeal penalty should be imposed.

**FACTUAL FINDINGS**

1. Appellant submitted a 2015 California Resident Income Tax Return on February 9, 2016. Appellant reported zero wages, zero taxable income, and zero total tax. Appellant attached a Schedule W-2 and a Wage and Tax Statement to her return, indicating that appellant was employed during tax year 2015, earned zero wages, and that appellant’s

- employer withheld California income tax of \$1,409. After applying withholding credits, appellant claimed a refund of \$1,409. This amount was refunded by respondent to appellant on February 26, 2016.
2. Respondent received a Wage and Income Transcript from the IRS which showed that appellant earned wages greater than the zero dollars reported on her return and that those wages were sufficient to warrant a California tax liability. Based on this information, respondent determined that appellant's return was invalid because appellant did not report any wages. Respondent increased appellant's taxable income by \$44,969.00,<sup>1</sup> which resulted in a tax deficiency of \$1,637.00. Respondent also imposed a late filing penalty of \$409.25, and interest.
  3. Respondent issued a Notice of Proposed Assessment (NPA) on December 8, 2021, to which appellant responded with a protest letter detailing her argument. Respondent then issued a Notice of Action (NOA) on September 21, 2022, affirming the NPA.
  4. This timely appeal followed.

### DISCUSSION

#### Issue 1: Whether appellant established error in respondent's proposed additional tax assessment.

California residents are taxed upon the entirety of their taxable income regardless of its source. (R&TC, § 17041(a).) R&TC section 18501 requires each person subject to the Personal Income Tax Law 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" 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, respondent, 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." Respondent's 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.

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<sup>1</sup> This amount reflects appellant's wages of \$49,013 less the standard deduction of \$4,044. OTA notes that the Wage and Income transcript reflects wages of \$49,012, which is a \$1 difference from the NPA with respect to appellant's wage income. It is unclear whether this is the result of rounding. However, to appellant's benefit, respondent did not include \$25 of interest income that is reflected in the Wage and Income transcript. As the overall result is a benefit to appellant, OTA will not make any adjustments based on these differences.

(*Ibid.*) Once respondent has met this initial burden, the burden then shifts to the taxpayer to prove the proposed assessment is inaccurate. (*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, into California Law. IRC section 61 states that, unless otherwise provided, “gross income means all income from whatever source derived,” including compensation for services. Wages and compensation for services are gross income within the meaning of IRC section 61. (*U.S. v. Romero* (9th Cir. 1981) 640 F.2d 1014, 1016; *Appeal of Balch*, 2018-OTA-159P.)

Here, appellant submitted a 2015 tax return in which she did not report her gross income. Appellant’s federal Wage and Income Transcript indicates that appellant earned income from two employers totaling \$49,012. Based on this information, respondent concluded that the return did not sufficiently disclose appellant’s wages. Respondent’s determination, which is based on appellant’s federal Wage and Income Transcript is both reasonable and rational.

Returns that do not contain sufficient data from which FTB can compute and assess the tax liability of a particular taxpayer, or that do not demonstrate an honest and genuine attempt to satisfy the requirements of California’s tax law (including “zero returns”) are not valid returns. (*Appeal of Reed*, 2021-OTA-326P; *Appeal of Hodgson* (2002-SBE-001) 2002 WL 245667.) Appellant’s return listed her employers but did not report her wages as part of her taxable income. Appellant’s return is therefore invalid because the relevant wages and gross income were not sufficiently disclosed.

Appellant asserts frivolous arguments to support her unfounded theory that it is unconstitutional to tax her wages because they do not constitute gross income. Appellant argues that citizens of the United States are exempt from the federal income tax. Appellant also asserts that compensation for services is not included in gross income. Frivolous arguments such as these fail to establish that appellant was not required to report her wages as income. (See *Appeal of Balch, supra.*) This stance has been consistently rejected pursuant to R&TC sections 17071 and 17072, which apply IRC section 61 to define taxable income as including wages and compensation accrued by the taxpayer. Appellant does not provide any relevant, non-frivolous arguments or evidence establishing error in respondent’s decision. Accordingly, appellant has not met her burden of showing error in respondent’s action.

Issue 2: Whether the late filing penalty should be abated.

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 respondent imposes a penalty, it is presumed to have been imposed correctly, and the burden of proof is on the taxpayer to establish otherwise. (*Appeal of Xie*, 2018-OTA-076P.) A taxpayer may rebut this presumption by providing credible and competent evidence showing reasonable cause for abatement of the penalty. (*Ibid.*) Reasonable cause is shown where the failure to file a timely return or make a timely payment of tax occurred despite the taxpayer exercising ordinary business care and prudence, or such a cause existed as would prompt an ordinarily prudent businessperson to have acted as the taxpayer did under similar circumstances. (See, e.g., *Appeal of Head and Feliciano*, 2020-OTA-127P.)

Here, appellant submitted a 2015 tax return on February 9, 2016, yet reported zero taxable income. Respondent reviewed appellant's federal Wage and Income Transcript, which confirmed that appellant had in fact received wages sufficient to warrant a tax liability. Tax returns that fail to disclose sufficient data or which do not reflect a taxpayer's genuine attempt to satisfy California tax requirements are considered invalid. (*Appeal of Reed, supra.*) As discussed above, appellant submitted an invalid return. As such, appellant failed to make a timely filing.

Appellant provides no valid arguments or evidence establishing that the penalty was improperly imposed or that she had reasonable cause for failing to file a timely return. Thus, appellant has not shown reasonable cause for her failure to file a timely return. Accordingly, the Office of Tax Appeals (OTA) finds that the late filing penalty should not be abated.

Issue 3: Whether a frivolous appeal penalty should be imposed.

R&TC section 19714 provides 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 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.

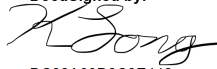
Appellant's argument that her wages are not taxable income is one that has been consistently rejected by the IRS, the courts, respondent, BOE, and OTA. (*See Appeal of Balch, supra.*) This is the first issuance of an opinion by OTA on behalf of appellant for this issue. OTA notes that appellant was warned in the NOA and during the briefing process that she may be subject to a frivolous appeal penalty. Accordingly, a \$500 penalty is imposed upon this appeal. Should appellant continue to file appeals that raise similarly frivolous or groundless arguments, OTA may impose further frivolous appeal penalties pursuant to R&TC section 19714, up to the maximum of \$5,000 per appeal.

HOLDINGS

1. Appellant has not established error in respondent’s proposed additional tax assessment.
2. The late filing penalty should not be abated.
3. A \$500 frivolous appeal penalty is imposed.

DISPOSITION

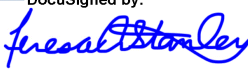
Respondent’s action is sustained. In addition, a \$500 frivolous penalty is imposed.

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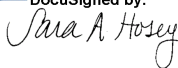
Keith T. Long  
 Administrative Law Judge

We concur:

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Teresa A. Stanley  
 Administrative Law Judge

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Sara A. Hosey  
 Administrative Law Judge

Date Issued: 9/13/2023