

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
J. STEEN) OTA Case No. 220610501
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OPINION

Representing the Parties:

For Appellant: J. Steen
For Respondent: Brad J. Coutinho, Attorney

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, J. Steen (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$388, a late-filing payment penalty of \$135, and applicable interest for the 2019 tax year.

Appellant waived the right to an oral hearing; therefore, the matter is being decided by the Office of Tax Appeals (OTA) based on the written record.

ISSUES

1. Whether appellant has established error in FTB’s assessment of tax.
2. Whether appellant has established that the late-filing payment penalty should be abated.

FACTUAL FINDINGS

1. Appellant has not filed a California Income Tax Return for the 2019 tax year.
2. Through its Integrated Non-Filed Compliance Program, FTB obtained information reported on federal Form 1099 from Thrift Savings Plan (Thrift) and the U.S. Office of Personnel Management (OPM) indicating that appellant received sufficient income to prompt a filing requirement for the 2019 tax year.¹ Thrift reported that appellant received

¹ For the 2019 tax year, the filing threshold for a single filer over the age of 65 with no dependents was California gross income of at least \$24,341 or California adjusted gross income (AGI) of at least \$20,693.

distributions of \$7,200, and OPM reported that appellant received distributions of \$22,764.

3. FTB issued appellant a Request for Tax Return, requesting that appellant file a return or explain why a return was not necessary. Appellant responded, stating that he had no filing requirement because he did not have any income in 2019 and supported himself with his savings.
4. After submitting this response to FTB, appellant filed a federal income tax return for the 2019 tax year reporting adjusted gross income (AGI) of \$33,998.
5. FTB issued a Notice of Proposed Assessment (NPA) estimating that appellant received \$29,964² of gross income, allowed a standard deduction, and proposed additional tax of \$388. FTB also proposed imposition of a late-filing penalty of \$135.
6. Appellant protested and FTB issued a Notice of Action affirming the NPA.
7. This timely appeal followed.

DISCUSSION

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

R&TC section 17041, subdivision (a), provides, in pertinent part, that tax shall be imposed upon the entire taxable income of every resident of California. R&TC section 17071 incorporates Internal Revenue Code (IRC) section 61, which defines “gross income” as including “all income from whatever source derived” including interest, as well as annuities, pensions, and income from life insurance and endowment contracts. R&TC section 18501 requires every individual subject to the Personal Income Tax 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” R&TC section 19087, subdivision (a), provides:

If any taxpayer fails to file a return, or files a false or fraudulent return with intent to evade the tax, for any taxable year, the Franchise Tax Board, at any time, may require a return or an amended return under penalties of perjury or 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.

When FTB makes a tax assessment based on an estimate of income, FTB’s initial burden is to show why its assessment is reasonable and rational. (*Appeal of Bindley*, 2019-OTA-179P.)

² \$7,200 plus \$22,764.

Federal courts have held that the taxing agency need only introduce some evidence linking the taxpayer with the unreported income before the presumption of correctness is established. (*Appeal of Sheward*, 2022-OTA-228P.) Once FTB has met its initial burden, the assessment is presumed correct and the taxpayer has the burden of proving it to be erroneous. (*Ibid.*) “A taxpayer is not in a good position to criticize FTB’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 Dauberger et al.*, (82-SBE-082) 1982 WL 11759.)

Here, FTB obtained information indicating that appellant received income totaling \$29,964 in 2019. Based on this amount of income, appellant was required to file a tax return for the 2019 tax year. FTB’s estimation of appellant’s income based upon federal Forms 1099 information is both reasonable and rational. Therefore, FTB has met its burden, and the burden to show error shifts to appellant. Appellant asserts that he did not receive income in 2019 and supported himself using his savings, but he subsequently filed a federal income tax return reporting AGI of \$33,998. While it is possible that all or a portion of the income is not subject to tax, appellant has not asserted or provided documentation to support that possibility. Accordingly, appellant has not met his burden of demonstrating error in FTB’s assessment.

Issue 2: Whether appellant has established that the late-filing penalty should be abated.

California imposes a penalty for the failure to file a return on or before the due date, unless it is shown that the failure is due to reasonable cause and not due to willful neglect. (R&TC, § 19131.) To establish reasonable cause, a taxpayer must show that the failure to file timely returns occurred despite the exercise of ordinary business care and prudence, or that cause existed as would prompt an ordinarily intelligent and prudent businessman to have so acted under similar circumstances. (*Appeal of Belcher*, 2021-OTA-284P.)

Appellant offers no evidence of reasonable cause. Appellant did not address the late-filing penalty issue. As discussed above, appellant did not establish that he had no filing requirement for the 2019 tax year. Therefore, appellant has not met his burden of showing that his failure to file was due to reasonable cause and not due to willful neglect.

HOLDINGS

1. Appellant has not established error in FTB’s assessment of tax.
2. Appellant has not established that the late-filing payment penalty should be abated.

DISPOSITION

FTB’s action is sustained.

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Veronica I. Long
 Administrative Law Judge

We concur:

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Ovsep Akopchikyan
 Administrative Law Judge

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Sheriene Anne Ridenour
 Administrative Law Judge

Date Issued: 12/8/2023