

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
**D. BASSILY** ) OTA Case No. 230212527  
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**OPINION**

Representing the Parties:

For Appellant: D. Bassily  
For Respondent: Lawrence Xiao, Attorney

S. RIDENOUR, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, D. Bassily (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$827, a late filing penalty of \$848.50, and applicable interest for the 2018 tax year.<sup>1</sup>

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.05.) Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

**ISSUES**

1. Whether appellant has demonstrated error in FTB’s proposed assessment, which is based on a final federal determination.
2. Whether appellant has demonstrated reasonable cause for failing to timely file a 2018 tax return.

**FACTUAL FINDINGS**

1. Appellant untimely filed his 2018 California Resident Income Tax Return (Form 540) on September 12, 2020. On Form 540, appellant reported adjusted gross income (AGI) of

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<sup>1</sup> As discussed below, FTB concedes error in its calculations and these amounts have been reduced.

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- \$17,481 for both his federal AGI and his California AGI, and \$0 total tax due. FTB accepted the return as filed.
2. Subsequently, FTB received federal information indicating that appellant reported federal AGI of \$71,732 on his 2018 federal tax return, for a difference of \$54,251 (i.e., \$71,732 - \$17,481) as compared to the amount appellant reported on his California tax return.
  3. On March 30, 2022, FTB issued appellant a Notice of Proposed Assessment (NPA) proposing to increase appellant's 2018 taxable income by \$54,251. The NPA proposed additional tax of \$3,394 and a late filing penalty of \$848.50, plus applicable interest.
  4. Appellant filed a timely protest asserting that he was a part-time California resident in 2018. Appellant provided a copy of appellant's residential lease for a property in Missouri, commencing on March 30, 2018. Appellant contended that he lived in California for 89 days in 2018, having moved out of state on March 20, 2018, and therefore, the proposed additional tax of \$3,394 was incorrect.
  5. During protest, FTB accepted appellant's argument that he was a part-time California resident in 2018 for 89 days and determined that appellant should have filed a California Nonresident or Part-Year Resident Income Tax Return (Form 540NR) instead of appellant's originally filed Form 540. FTB recalculated appellant's liability and reduced the additional tax by \$2,567, from \$3,394 to \$827.
  6. On January 12, 2023, FTB issued a Notice of Action (NOA) reflecting the revised proposed tax assessment of \$827, as well as a late filing penalty of \$848.50,<sup>2</sup> plus applicable interest.
  7. This timely appeal followed.
  8. On appeal, FTB provides appellant's 2018 federal Wage and Income Transcript and FTB Stars Data Sheet showing appellant received the following income in 2018: (1) \$473 from Kansas City University of Medicine; (2) \$46,768 in dividend income; (3) \$24,475 in interest income; and (4) \$16 in capital gain. FTB also provides a proforma Form 540NR and states that it revised its calculations. The revised proposed assessment is reduced to additional tax of \$822 and a late filing penalty of \$205.50, plus applicable interest.

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<sup>2</sup> As discussed below, FTB concedes on appeal that it erroneously did not also reduce the \$848.50 late filing penalty.

DISCUSSION

Issue 1: Whether appellant has demonstrated error in FTB's proposed assessment, which is based on a federal determination.

FTB's determinations are presumed correct and a taxpayer has the burden of proving it to be wrong. (*Appeal of Davis and Hunter-Davis*, 2020-OTA-182P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid.*) In the absence of credible, competent, and relevant evidence showing an error in FTB's determinations, FTB's determinations will be upheld. (*Ibid.*) The burden of proof requires proof by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(b).)

California residents are taxed on their entire taxable income, regardless of source, while nonresidents are only taxed on income from California sources. (R&TC, §§ 17041(a), (b), & (i), 17951.) Part-year residents are taxed on their entire taxable income earned while residents of California, as well as on all income derived from California sources while nonresidents. (R&TC, § 17041(b) and (i).) Appellant was a part-year resident of California from January 1, 2018, to March 30, 2018.

The calculation of the tax rate for a nonresident, which is statutorily required by R&TC section 17041(b), is part of a multi-step process known as the "California method." (*Appeal of Williams*, 2023-OTA-041P.) The California method requires the calculation of three ratios to be applied to determine the prorated amounts of (1) itemized deductions or standard deductions, (2) tax on California taxable income and (3) allowable credits, as follows:

1. **Prorated Deductions.** To calculate the percentage of itemized deductions or the prorated standard deduction allowable, the taxpayer must divide California AGI by total AGI from all sources. The resulting ratio is then applied to the itemized deductions or standard deduction to find the prorated allowable amount. (R&TC, § 17304.)
2. **Tax Rate.** To calculate the tax rate for California, the taxpayer must divide the tax on the total taxable income (calculated as if the taxpayer was a California resident for the entire year) by the taxpayer's total taxable income. The resulting rate is then applied to the taxpayer's California taxable income to determine the California tax. (R&TC, § 17041(b)(2).)
3. **Prorated Credits.** To calculate the percentage of credits allowed on the taxpayer's California return, the California taxable income is divided by the

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total taxable income. The resulting ratio is then applied to the total exemption amount to find the prorated credits. (R&TC, § 17055.)

In reviewing FTB's calculations on the proforma Form 540NR that FTB prepared, the Office of Tax Appeals finds that the calculations are consistent with the law described above. The proforma Form 540NR shows appellant's federal AGI (as well as his AGI from all sources) of \$71,732, less a standard deduction of \$4,401, for a revised total taxable income of \$67,331 and tax of \$3,512. To calculate appellant's California tax rate, appellant's tax of \$3,512 is divided by appellant's total taxable income of \$67,331, for a California tax rate of 0.0522 (rounded). The California tax rate of 0.0522 is applied only to appellant's California taxable income (see below).

To calculate appellant's California AGI, any income from a source within California is added to income from non-California sources while appellant was a resident of California (here, \$71,259)<sup>3</sup> and then prorated to account for the 89 days appellant was a resident of California in 2018,<sup>4</sup> for a California AGI of \$17,376<sup>5</sup> and a California AGI to total AGI ratio of 0.2422.<sup>6</sup> Appellant's AGI ratio of 0.2422 is applied to appellant's reported standard deduction of \$4,401, for prorated standard deduction of \$1,066.<sup>7</sup> The prorated standard deduction is then subtracted from appellant's California AGI to derive appellant's California taxable income of \$16,310.<sup>8</sup> Appellant's California tax rate of 0.0522 is applied to appellant's California taxable income of \$16,310, for California tax of \$851.<sup>9</sup> Appellant's claimed exemption credits of \$118 is applied to the 0.2422 ratio, for prorated exemption credits of \$29, which is then subtracted from appellant's California tax of \$851, for appellant's California tax after credits of \$822. In short,

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<sup>3</sup> This amount consists of: (1) \$46,768 in dividend income; (2) \$24,475 in interest income; and (3) \$16 in capital gain. There is no evidence indicating that the \$71,259 in income was not earned evenly throughout the 2018 tax year. The \$473 from Kansas City University of Medicine was earned outside of California while appellant was no longer a California resident; therefore, it is not included in appellant's California AGI.

<sup>4</sup> The income of \$71,259 was prorated to account for the 89 days appellant was a resident of California in 2018, based on lack of evidence indicating that the income was not earned during this period.

<sup>5</sup> The calculation for this amount is:  $\$71,259 \times (89 \text{ days}/365 \text{ days})$ .

<sup>6</sup> The calculation for this ratio is:  $\$17,376/\$71,732$ .

<sup>7</sup> The calculation for this amount is:  $0.2422 \times \$4,401$ .

<sup>8</sup> The calculation for this amount is:  $\$17,376 - \$1,066$ .

<sup>9</sup> The calculation for this amount is:  $\$16,310 \times 0.0522$ .

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FTB properly followed the steps using the California method to calculate appellant's revised California tax liability of \$822 for 2018. (See R&TC, §§ 17041(b), 17304, 17055.)

Appellant asserts that he disagrees with the proposed assessment. Specifically, appellant asserts that the "income [he] made during the first 89 days of living in California" was \$1,704, and "the rest of [his] income occurred in the second half of 2018" while appellant was living outside of California. On appeal, appellant provides a Form 540NR. On the provided return, appellant reported federal AGI of \$71,732, less the standard deduction of \$4,401, for total taxable income of \$67,331 and tax of \$3,512. Appellant also reported California AGI of \$1,704, California taxable income of \$1,599, and tax of \$80. However, as explained above, appellant, as a part-year resident, is taxed on his entire taxable income earned while a resident of this state, as well as all income derived from California sources while a nonresident. (R&TC, § 17041(b) and (i).) To calculate appellant's California AGI, the dividend income of \$46,768; interest income of \$24,475; and capital gain of \$16 were added together to derive \$71,259, which was prorated to account for the 89 days appellant was in California by multiplying \$71,259 by a ratio of 0.243 (i.e., 89 days/365 days), resulting in a California AGI of \$17,376, as opposed to the California AGI of \$1,704 that appellant contends is correct. Appellant has not provided evidence establishing that the \$71,259 in income was not earned evenly throughout the 2018 tax year, let alone not earned during the 89 days appellant was a resident of California. Appellant has not produced any evidence to show error in either the proposed assessment or FTB's application of the formula set forth in R&TC section 17041(b).

### Issue 2: Whether appellant has demonstrated reasonable cause for failing to timely file a 2018 tax return.

R&TC section 19131 imposes a penalty for the failure to timely file a return, unless it is shown that the late filing is due to reasonable cause and not willful neglect. (R&TC, § 19131(a).) The amount of the penalty is 5 percent of the tax due, after allowing for timely payments, for every month or fraction of a month that the return is late, up to a maximum 25 percent penalty. (R&TC, § 19131(a).) The penalty will be abated if a taxpayer establishes that the failure to file was due to reasonable cause and not willful neglect. (R&TC, § 19131(a).)

Appellant does not address abatement of the late filing penalty and appellant has provided no evidence showing that his failure to file a timely return was due to reasonable cause. Therefore, appellant has not established reasonable cause to abate the late filing penalty.

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Regarding calculation of the penalty, the NOA reflected a late filing penalty of \$848.50; however, as conceded by FTB, this amount is incorrect. Appellant filed his return more than 5 months after the due date for the return; therefore, the amount of the penalty is the maximum 25 percent of the tax due. On appeal, FTB revised the proposed additional tax to \$822, and 25 percent of \$822 is \$205.50, which is the amount FTB concedes is the correct penalty amount.

HOLDINGS

1. Appellant has not demonstrated error in FTB’s proposed assessment, which is based on a federal determination.
2. Appellant has not demonstrated reasonable cause for failing to timely file a 2018 tax return.

DISPOSITION

FTB’s action is modified to reflect its concessions on appeal to reduce the proposed additional tax to \$822, and the late filing penalty to \$205.50. Otherwise, FTB’s action is sustained.

DocuSigned by:  
*Sheriene Anne Ridenour*  
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Sheriene Anne Ridenour  
Administrative Law Judge

Date Issued: 12/20/2023