OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	OTA Case No. 220410141
J. TWO	

OPINION

Representing the Parties:

For Appellant: J. Two

For Respondent: David Muradyan, Attorney

For Office of Tax Appeals: John Yusin, Attorney

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, J. Two (appellant) appeals an action by the Franchise Tax Board (respondent) proposing additional tax of $3,924, a delinquent filing penalty of $981, a demand penalty of $981, a filing enforcement fee of $97, and applicable interest for the 2018 taxable year.

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

ISSUE

Whether appellant has established error in respondent's proposed assessment.

FACTUAL FINDINGS

1. At the time this appeal was filed, appellant had not filed a California 2018 income tax return.
2. Respondent received information from a lending institution that appellant had paid mortgage interest for the 2018 taxable year, as reported on a Form 1098 Mortgage Interest Statement (Form 1098) issued to appellant.

3. On July 13, 2021, respondent issued a Demand for Tax Return (Demand) for the 2018 taxable year.
4. After appellant did not respond to the Demand, respondent issued a Notice of Proposed Assessment (NPA). The NPA reflected estimated income of $87,660, itemized deductions of $14,610 (for mortgage interest paid), taxable income of $73,050, and total tax of $3,924. The NPA also included a late filing penalty and a demand penalty, each for $981, and a filing enforcement fee of $97.
5. Respondent used a 6:1 income to mortgage interest paid ratio to estimate income; this ratio was based on the results of a study respondent undertook in 2019, which revealed that a significant number of non-filers who made mortgage interest payments actually had a filing requirement. Respondent further states the study shows that the actual ratio was an average of 14:1 over the six taxable years studied, and that previous studies showed no less than a 6:1 income to mortgage interest paid ratio.
6. Appellant protested the NPA and requested all documents that respondent had used to compute the estimated tax. Appellant also requested additional time to provide more information and argument for the protest, but there is no record of such additional information or argument being provided.
7. Subsequently, respondent issued a Notice of Action (NOA), affirming the NPA, and included a warning regarding the imposition of a frivolous appeal penalty pursuant to R&TC section 19714.
8. Appellant filed this appeal without making any argument(s), explaining that the appeal was incomplete and referred to evidence that would be presented in an opening brief.
9. OTA then sent a letter to appellant, allowing appellant 60 days to file a supplemental opening brief.
10. Appellant later requested another 60-day extension to file the supplemental opening brief, which OTA granted.
11. When appellant did not submit any additional information, OTA sent a letter notifying appellant the deadline for filing a supplemental opening brief had passed.
12. After appellant did not respond to OTA's notice of an oral hearing, OTA sent appellant a letter indicating that the appeal would be decided on the written record without an oral hearing.

13. Respondent had also issued a Demand and an NPA for the 2017 taxable year, on April 26, 2019, and September 23, 2019, respectively.

DISCUSSION

Every individual subject to the Personal Income Tax Law is required to make and file a return with respondent when their gross income exceeds certain thresholds. (R&TC, § 18501(a)(1)-(4).) If any taxpayer fails to file a return, respondent "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." (R&TC, § 19087(a).) When respondent proposes a tax assessment based on an estimate of income, its initial burden is to show that the proposed assessment was reasonable and rational. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; see *Appeal of Talavera*, 2020-OTA-022P.) A proposed assessment based on unreported income is presumed to be correct when the taxing agency introduces a minimal factual foundation to support the assessment. (See *In re Olshan* (9th Cir. 2004) 356 F.3d 1078, 1084, citing *Palmer v. IRS* (9th Cir. 1997) 116 F.3d 1309, 1312.) When a taxpayer fails to file a valid return and refuses to cooperate in the ascertainment of his income, respondent is given "great latitude" in determining the amount of his tax liability. (*Appeals of Tonsberg* (85-SBE-034) 1985 WL 15812.)

Respondent's determination is presumed to be correct, and the taxpayer has the burden of proving otherwise. (*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 error, respondent's determinations must be upheld. (*Ibid*.) The burden of proof requires proof by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219.) When respondent has met its initial burden, the taxpayer has the burden of proving the proposed assessment is incorrect. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) To meet this evidentiary standard, a party must establish by documentation or other evidence that the circumstances it asserts are more likely than not to be correct. (*Appeal of Belcher*, 2021-OTA-284P.)

Here, respondent used appellant's 2018 Form 1098 mortgage interest information as the basis for the amounts of tax imposed on the NPA, thereby satisfying its initial burden. Once respondent met its initial burden, the presumption of correctness applied to its determination.

(*Appeal of Silver*, 2022-OTA-408P.)[1] Since appellant has not presented any evidence or argument to support their position, appellant has failed to prove that respondent's proposed assessment was wrong. (See *Honeywell, Inc. v. State Board of Equalization* (1982) 128 Cal.App.3d 739, 744.)

HOLDING

Appellant has not established error in respondent's proposed assessment.

DISPOSITION

Respondent's action is sustained.

DocuSigned by:
Tommy Leung
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Tommy Leung
Administrative Law Judge

We concur:

DocuSigned by:
Michael F. Geary
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Michael F. Geary
Administrative Law Judge

DocuSigned by:
Amanda Vassigh
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Amanda Vassigh
Administrative Law Judge

Date Issued: 2/22/2024

[1] See *Gold Emporium, Inc. v. Commissioner* (7th Cir. 1990) 910 F.2d 137 4, 1378; *Hardy v. Commissioner* (9th Cir. 1999) 181 F.3d 1002, 1005, cited by respondent in its opening brief.