

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 221212154
M. CRUMPACKER)
)
)
)
)
)

OPINION

Representing the Parties:

For Appellant: M. Crumpacker

For Respondent: Eric R. Brown, Attorney

H. LE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, M. Crumpacker (appellant) appeals an action by the Franchise Tax Board (respondent) proposing additional tax of \$4,058, a late filing penalty of \$984, and applicable interest for the 2019 tax year.

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

ISSUES

1. Whether appellant has shown error in respondent’s proposed assessment of tax, penalty, and interest for the 2019 tax year.
2. Whether a frivolous appeal penalty should be imposed.

FACTUAL FINDINGS

Filing History

1. Appellant has lived in California since at least 1996.
2. Appellant has never filed a California income tax return for any year.
3. Respondent has issued filing enforcement Notice of Proposed Assessments (NPAs) to appellant for the 1997 through 2008 tax years, which are all final.

4. The Board of Equalization has imposed a \$750 frivolous appeal penalty on appellant for the 2002 tax year.

2019 Tax Year

5. Respondent obtained information from third-party payors, which indicated that appellant received income totaling \$79,964 from the third parties during the 2019 tax year.
6. Respondent issued a Request for Tax Return (Request) requesting that appellant either file a California income tax return, show that he had already filed such a return, or else explain why he did not have a filing requirement for the 2019 tax year.
7. After several correspondences between appellant and respondent, respondent issued an NPA to appellant, based on appellant's estimated income of \$79,964.
8. Appellant filed a protest, which respondent rejected through a Notice of Determination.
9. Respondent issued a Notice of Action that affirmed the NPA and noted that OTA may impose the frivolous appeal penalty.
10. Thereafter, appellant filed this timely appeal.
11. During this appeal, OTA informed appellant that it may impose the frivolous appeal penalty.

DISCUSSION

Issue 1: Whether appellant has shown error in respondent's proposed assessment of tax, penalty, and interest for the 2019 tax year.

R&TC section 18501 requires every individual 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 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 respondent has met this initial burden, the burden then shifts to the taxpayer to prove the proposed assessment is wrong. (*Ibid.*)

Appellant did not file a 2019 return. Respondent received information from third-party payors, which indicated that appellant received income totaling \$79,964 from the third parties during the 2019 tax year. Respondent used this information to estimate appellant's income and determined that appellant had a 2019 return filing requirement. Accordingly, respondent's use of the third-party information it received to estimate appellant's income is reasonable and rational.

In this appeal, appellant's primary argument¹ is that he has satisfied his tax obligation by providing respondent with an "accommodation indorsement" that "grants an unrestricted loan of [his] credit on [his] unlimited liability for the payment of debt. . . ." Appellant alleges that respondent accepted this "accommodation indorsement" by failing to return it or object to it.

However, appellant's argument is frivolous, and courts have found similar arguments to be frivolous. (See *U.S. v. Heath* (6th Cir. 2008) 525 F.3d 451 [the court of appeals affirmed the defendant's conviction for presenting a fictitious financial instrument, so-called "Registered Bill of Exchange," to the IRS that appeared to be a certified check but for which there was no actual account]; *U.S. v. Provost*, 109 A.F.T.R.2d (RIA) 2012-1706 (E.D. Cal. 2012) [the court rejected the taxpayer's issuance of "Unlimited Indemnity Bond" as frivolous]; Rev. Rul. 2004-31, 2004-12 I.R.B. 617 [the use of "Bills of Exchange," Form UCC-3 and "Sight Drafts" to discharge debts to the Government are frivolous].)

OTA does not need to address frivolous arguments "with somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit." (*Wnuck v. Commissioner*, 136 T.C. 498 citing *Crain v. Commissioner* (5th Cir. 1984) 737 F.2d 1417, 1417.) It is sufficient to note that appellant's argument, which is substantially similar to the arguments previously rejected by courts, has no colorable merit, and little more need be said other than to state that appellant has not met his burden of proving respondent's assessment to be wrong.

Appellant also provides no argument or evidence to support abatement of the penalty or interest included in the NPA; rather, appellant focuses on the frivolous argument mentioned above. Accordingly, OTA finds no basis to abate penalty or interest in this appeal.

¹ Appellant raises a plethora of arguments in this appeal. This Opinion addresses appellant's primary argument. As to other arguments not addressed herein, OTA has considered them all and concludes that they are groundless or without merit.

Issue 2: Whether the frivolous appeal penalty should be imposed.

The law provides that a frivolous appeal penalty may be imposed when OTA finds that an appeal before OTA was instituted or maintained primarily for delay, or that the taxpayer's position is frivolous or groundless. (R&TC, § 19714; Cal. Code Regs., tit. 18, § 30217(a).) OTA may consider any relevant factors in determining whether an appeal is frivolous or is maintained primarily for delay. (Cal. Code Regs., tit. 18, § 30217(b).) The following is a non-exclusive list of factors that may be relevant in determining whether to impose a frivolous appeal penalty, and in what amount: (1) whether appellant is making arguments that have been previously rejected by OTA in a precedential opinion, by the Board of Equalization in a precedential Opinion, or by the courts; (2) whether appellant is making the same arguments that the same appellant made in prior appeals; (3) whether appellant submitted the appeal with the intent of delaying legitimate tax proceedings or the legitimate collection of tax owed; (4) whether appellant has a history of submitting frivolous appeals or failing to comply with California's tax laws; or (5) whether appellant has been notified, in a current or prior appeal, that a frivolous appeal penalty may apply. (*Ibid.*)


As previously noted, appellant's argument that he can pay his tax liability by using a fictitious financial instrument has been rejected. As to appellant's pattern and practice of conduct in prior years, respondent's records indicate that appellant has never filed a California return, although he has lived in California since at least 1996. Respondent has issued filing enforcement NPAs to appellant for the 1997 through 2008 tax years, which are all final. Furthermore, the Board of Equalization has previously imposed a frivolous appeal penalty on appellant for the 2002 tax year of \$750. Also, appellant was notified in this current appeal by both respondent and OTA that a frivolous appeal penalty may be imposed. Thus, based on the frivolous nature of the argument presented by appellant, his extensive noncompliance history, and his prior awareness that the frivolous appeal penalty may apply, OTA is imposing the frivolous appeal penalty of \$2,000.

HOLDINGS


1. Appellant has not shown error in respondent’s proposed assessment of tax, penalty, and interest for the 2019 tax year.
2. OTA imposes the frivolous appeal penalty of \$2,000.


DISPOSITION

OTA sustains respondent’s action.

DocuSigned by:

AT1753ADD49442B...
 Huy “Mike” Le
 Administrative Law Judge

We concur:

DocuSigned by:

1A9B52EF88AC4C7...
 Michael F. Geary
 Administrative Law Judge

DocuSigned by:

48745B806914B4...
 Josh Aldrich
 Administrative Law Judge

Date Issued: 2/28/2024