

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
N. CATINARI)
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OTA Case No. 230312740

OPINION

Representing the Parties:

For Appellant: N. Catinari

For Respondent: Andrea Watkins, Attorney

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, N. Catinari (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing tax of \$9,463, a late-filing penalty of 2,365.75, and applicable interest for the 2019 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 has demonstrated error in FTB’s determination that she has a filing requirement for the 2019 tax year or in FTB’s proposed assessment of tax.
2. Whether appellant has shown reasonable cause to abate the late-filing penalty.

FACTUAL FINDINGS

1. FTB received information based on third-party reporting on three separate 2019 federal Forms 1099 that appellant earned interest income of \$677, retirement income of \$19,336, and sold California real property for gross proceeds of \$385,000. FTB determined that appellant earned sufficient income for the 2019 tax year to prompt a filing requirement.

2. FTB subsequently issued appellant a Request for Tax Return for the 2019 tax year asking that appellant file a 2019 California personal income tax return (return), provide evidence that she already filed it, or explain why she had no filing requirement for that tax year.
3. When appellant did not respond, FTB issued appellant a Notice of Proposed Assessment (NPA) estimating appellant's 2019 income and proposing tax, a late-filing penalty, and applicable interest, for the 2019 tax year. Appellant protested the NPA. FTB issued a Notice of Action affirming the NPA.
4. This timely appeal followed.¹ On appeal, appellant attaches documentation concerning the purchase of her home located in Sacramento County, and documentation related to the purchase of her car.² On appeal, FTB provides third-party records reporting that appellant realized retirement income, interest income, and gross proceeds from the sale of real property located in Placer County on April 8, 2019.
5. As of the date briefing closed, appellant has not filed a 2019 return.

DISCUSSION

Issue 1: Whether appellant has demonstrated error in FTB's determination that she has a filing requirement for the 2019 tax year or in FTB's proposed assessment of tax.

R&TC section 18501 requires every individual subject to the Personal Income Tax Law 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," if an individual has gross income or adjusted gross income exceeding certain filing thresholds. (R&TC, § 18501(a)(1)-(4).³) Gross income means all income from whatever source derived, unless specifically excluded. (Internal Revenue Code (IRC), § 61(a), R&TC, § 17071.) Gross income includes "[g]ains derived from dealings in property." (IRC, § 61(a)(3); R&TC, § 17071.)

¹ On appeal, the parties do not specifically address the imposition of interest; therefore, it is not discussed further.

² Appellant provided evidence of a cashier's check to a car dealership, but did not provide the original contract for the purchase of her car on appeal.

³ For the 2019 tax year, the filing threshold for a single individual under 65 years of age with no dependents is gross income of more than \$18,241 or California adjusted gross income of more than \$14,593. The filing threshold for a single individual over 65 years of age with no dependents is gross income of more than \$24,341 or California adjusted gross income of more than \$20,693.

R&TC section 19087(a) provides that if any taxpayer fails to file a return, FTB, 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.” When FTB makes a proposed assessment of tax based on an estimate of income, FTB’s initial burden is to show that its imposed assessment is reasonable and rational. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509, 514 (*McColgan*); *Appeal of Bindley*, 2019-OTA-179P (*Bindley*)). An assessment based on unreported income is presumed correct when the taxing agency introduces a minimal factual foundation to support the assessment. (*Bindley, supra.*)

Here, FTB determined that, in total, the three separate federal Forms 1099 reported gross income in excess of the 2019 filing threshold. On appeal, appellant does not contest that she earned interest income, retirement income, or realized gross proceeds from the sale of real property. Thus, FTB’s use of the third-party information to estimate appellant’s income is reasonable and rational. Accordingly, appellant had a 2019 filing requirement.

Once FTB has met its initial burden, the proposed assessment of tax is presumed correct, and the taxpayer has the burden of proving it to be wrong. (*McColgan, supra; Bindley, supra.*) Unsupported assertions are insufficient to satisfy a taxpayer’s burden of proof. (*Appeal of Gorin*, 2020-OTA-018P.) In the absence of credible, competent, and relevant evidence showing error in FTB’s determination, the determination must be upheld. (*Bindley, supra.*)

Appellant asserts that she did not earn sufficient income to have a 2019 filing requirement. On appeal, she provides documentation concerning the purchase of her home located in Sacramento County, and documentation related to her car purchase. However, on appeal, FTB provides third-party documentation showing that on April 8, 2019, appellant realized gross proceeds from the sale of real property located in Placer County.⁴ In briefing, FTB requested documentation regarding its proposed assessment, yet appellant has not produced

⁴ On appeal, FTB provides a 2019 federal wage and income transcript dated March 14, 2023, reporting gross proceeds of a real property sale which closed on April 8, 2019, for four assessor’s parcel numbers (APNs) ending in 041, 043, 044, and 045. The wage and income transcript indicates that these properties were vacant. FTB also provides third-party records for the parcel with an APN ending in 041, showing that the real property sale occurred in Placer County and was recorded on April 8, 2019. FTB did not provide records for the remaining APNs.

evidence showing that FTB's estimate of her income is incorrect.⁵ Further, appellant does not explain the relevance, if any, of her home purchase or car purchase in 2019 to the question of whether she had a 2019 filing requirement. Because appellant has not provided credible and competent evidence showing error in FTB's determination, its proposed assessment of tax must be upheld. (*Bindley, supra.*)

Issue 2: Whether appellant has shown reasonable cause to abate the late-filing penalty.

R&TC section 19131(a) imposes a late-filing penalty on a taxpayer who fails to file a return by either the due date or the extended due date unless it is shown that the failure was due to reasonable cause and not willful neglect. When FTB imposes a late-filing penalty, it is presumed to have been correctly imposed, and the burden of proof is on the taxpayer to show that reasonable cause exists to abate the penalty. (*Appeal of Cremel and Koepfel, 2021-OTA-222P.*) To overcome the presumption of correctness, the taxpayer must provide credible and competent evidence supporting a claim of reasonable cause. (*Ibid.*) To establish reasonable cause, the taxpayer must show that the failure to timely file a return occurred despite the exercise of ordinary business care and prudence. (*Ibid.*)

Here, appellant's 2019 return was due on July 15, 2020.⁶ As of the date briefing closed, appellant has not yet filed a 2019 return. Appellant provides no evidence demonstrating reasonable cause; she only asserts that she did not earn sufficient income to file. However, taxpayers must acquaint themselves with the requirements of California tax law. (*Appeal of Cremel and Koepfel, supra.*) Even if a taxpayer has a sincere belief that they are not required to file a return for the tax year, that belief alone does not constitute reasonable cause for the failure to file a timely return. (*Ibid.*) Thus, appellant has not demonstrated that the late-filing penalty should be abated for reasonable cause.

⁵ FTB asserts that it sent a letter to appellant on April 6, 2023, requesting information and documentation, to which appellant did not respond. However, FTB does not provide a copy of the April 6, 2023 letter on appeal. General categories of information and documentation relevant to appellant's 2019 filing requirement and tax liability include a description of the 2019 real property sale in Placer County, and documentation establishing appellant's gross or net proceeds on the sale, including the costs to purchase and improve the real property.

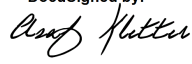
⁶ In response to the COVID-19 pandemic, FTB postponed the filing and payment due dates for the 2019 tax year from April 15, 2020, to July 15, 2020. (See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2020-3-state-postpones-tax-deadlines-until-july-15-due-to-the-covid-19-pandemic.html>.)

HOLDINGS

1. Appellant has not demonstrated error in FTB’s determination that she has a filing requirement for the 2019 tax year or in FTB’s proposed assessment of tax.
2. Appellant has not shown reasonable cause to abate the late-filing penalty.

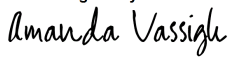
DISPOSITION

FTB’s action is sustained.


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 Asaf Kletter
 Administrative Law Judge

We concur:

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 Amanda Vassigh
 Administrative Law Judge

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 Teresa A. Stanley
 Administrative Law Judge

Date Issued: 3/4/2024