

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 230112277  
T. HOFFMANN )  
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**OPINION**

Representing the Parties:

For Appellant: T. Hoffmann

For Respondent: Lawrence Xiao, Attorney

H. LE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, T. Hoffmann (appellant) appeals an action by the Franchise Tax Board (respondent) proposing additional tax of \$6,718, a late-filing penalty of \$1,679.50, a demand penalty of \$1,789.75, a filing enforcement fee of \$97, and applicable interest for the 2017 tax year.<sup>1</sup>

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

**ISSUE**

Whether appellant has shown error in respondent’s proposed assessment of tax, penalties, fee, and interest for the 2017 tax year.

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<sup>1</sup> Although appellant requested refunds for the 2013–2016 and 2018–2022 tax years, OTA does not have jurisdiction over these years because OTA has no evidence in the record that shows that respondent has issued Notices of Action or a claim for refund denials, or that appellant has filed claims for refund for these tax years. (Cal. Code Regs., tit. 18, § 30103(a).)

### FACTUAL FINDINGS

1. Respondent obtained information from third-party payors, which indicated that appellant received income from the third parties during the 2017 tax year that meets the filing requirement threshold.
2. Respondent issued a Demand for Tax Return (Demand) 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 2017 tax year.
3. Subsequently, respondent issued a Notice of Proposed Assessment (NPA) to appellant, based on appellant's estimated income.
4. Appellant submitted a 2017 California Tax Return, indicating that his California wage was "N/A," and his total taxable income was "\$0."
5. Respondent issued a Notice of Action that affirmed the NPA.
6. Thereafter, appellant filed this timely appeal.

### DISCUSSION

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, or files a false or fraudulent return with intent to evade the tax, 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 timely 2017 return. Respondent received information from third-party payors, which indicated that appellant received income from the third parties during the 2017 tax year. Respondent used this information to estimate appellant's income and determined

that appellant had a 2017 return filing requirement. Accordingly, respondent's use of the third-party information it received to estimate appellant's income is reasonable and rational. Thus, the burden shifts to appellant to prove the proposed assessment is wrong. (*Appeal of Bindley, supra.*)

Appellant makes numerous arguments including the following: (1) he submitted a late return and wrote his California wage was "N/A" and his total taxable income was "\$0"; (2) he refused respondent's notices under the Uniform Commercial Code; and (3) respondent was required to provide signatures to validate its notices.<sup>2</sup>

However, appellant's arguments are frivolous, and courts have found similar arguments to be frivolous. (See *Olson v. U.S.* (9th Cir. 1985) 760 F.2d 1003, 1005 [the court found the taxpayer liable for a penalty for filing a frivolous tax return because he listed his wages as zero]; *Sego v. Commissioner*, (2000) 114 T.C. 604, 611 ["taxpayers cannot defeat actual notice by deliberately refusing delivery of statutory notices of deficiency"]; *Urban v. Commissioner* (9th Cir. 1992) 964 F.2d 888, 889 [notice of tax deficiency did not have to be signed to be valid].)

OTA does not need to address frivolous arguments "with somber reasoning and copious citation of precedent" because "to do so might suggest that these arguments have some colorable merit." (*Whuck v. Commissioner* (2011) 136 T.C. 498, 499-512 citing *Crain v. Commissioner* (5th Cir. 1984) 737 F.2d 1417, 1417.) It is sufficient to note that appellant's arguments, which are substantially similar to the arguments previously rejected by courts, have 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.

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

Appellant is advised that OTA has the statutory authority to impose a penalty of up to \$5,000 if it finds that an appeal before it has been instituted or maintained primarily for delay or that a taxpayer's position in the appeal is frivolous or groundless. (R&TC, § 19714; see also Cal.

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<sup>2</sup> Appellant also argues that respondent stole his identity, that he himself discharged his own debts and liabilities, that he has no contract with the tax agencies, and that he has a cease-and-desist order. OTA has considered all of appellant's arguments and concludes that they are unsupported by evidence, groundless, or without merit.


Code Regs., tit. 18, § 30217.) Although OTA does not impose the penalty in this proceeding, appellant’s positions in this appeal suggest that such a penalty may be warranted in the future should appellant file another appeal with OTA raising the same or similar issues.

HOLDING


Appellant has not shown error in respondent’s proposed assessment of tax, penalties, fee, and interest for the 2017 tax year.


DISPOSITION

OTA sustains respondent’s action.

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Huy "Mike" Le  
Administrative Law Judge

We concur:

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Josh Lambert  
Administrative Law Judge

DocuSigned by:  
  
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Josh Aldrich  
Administrative Law Judge

Date Issued: 12/21/2023