

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
C. LUKINS (DEC'D))
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OTA Case No. 220811116

OPINION

Representing the Parties:

For Appellant: M. Lukins, Representative

For Respondent: Christopher M. Cook, Attorney

R. TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, C. Lukins (Dec'd) (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$3,644, a late filing penalty of \$911, and applicable interest for the 2018 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 established error in FTB's proposed assessment.
2. Whether appellant has established reasonable cause to abate the late filing penalty.

FACTUAL FINDINGS

1. For tax year 2018, FTB received information from the Boeing Company, Dovenmuehle Mortgage, Inc., and Defense Finance and Accounting Service showing appellant received sufficient income to have a filing requirement.
2. The Boeing Company reported on Form W-2 that appellant earned wages and that appellant's address was in Vacaville, California.¹

¹ For tax year 2017, the Boeing Company reported that appellant's address was in Helotes, TX.

3. The Boeing Company also reported on Form 1099-DIV that appellant earned \$20 in ordinary dividends and that appellant's address was in Helotes, Texas.
4. Dovenmuehle Mortgage, Inc. reported on Form 1098 that appellant paid mortgage interest and that appellant's address was in Vacaville, California.²
5. Dovenmuehle Mortgage, Inc. reported on Form 1099-INT that appellant earned interest income and that appellant's address was in Vacaville, California.
6. State Street Retiree Services reported on Form 1099-R that appellant received retirement distributions and that appellant's address was in Helotes, Texas.
7. Defense Finance and Accounting Service reported on Form 1099-R that appellant received a retirement distribution and that appellant's address was in Vacaville, California.³
8. On February 1, 2022, FTB issued appellant a Request for Tax Return because FTB did not have a record of appellant filing a 2018 California tax return. Appellant did not respond.
9. On April 8, 2022, FTB issued appellant a Notice of Proposed Assessment (NPA) proposing to assess \$3,644 of tax and a \$911 late filing penalty, plus interest. On April 13, 2022, appellant protested the NPA. Appellant argued that he did not live or work in California and that he was a Texas resident in 2018.
10. On July 18, 2022, FTB issued a Notice of Action affirming the NPA.
11. Appellant timely filed this appeal.

DISCUSSION

Issue 1: Whether appellant established error in FTB's proposed assessment.

California residents are taxed upon their entire taxable income (regardless of source), while nonresidents are only taxed on income from California sources. (R&TC, §§ 17041(a), (b), & (i), 17951.) Every individual subject to the Personal Income Tax Law, whose gross income from all sources exceeds certain filing thresholds, is required to file a return with FTB

² Appellant did not receive a Form 1098 for tax year 2017.

³ For tax year 2017, the Defense Finance and Accounting Service reported appellant's address in San Antonio, TX.

specifically stating the items of the individual's gross income from all sources and any allowable deductions and credits. (R&TC, § 18501(a)(1)-(4).)

If a taxpayer fails to file a return, then 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.” (R&TC, § 19087(a).) FTB is given “great latitude” in estimating income when taxpayers fail to file a return or provide the information necessary to ascertain their tax liability. (*Appeal of Bindley*, 2019-OTA-179P.) If FTB proposes a tax assessment based on an estimate of income, then FTB's initial burden is to show that its proposed assessment is reasonable and rational. (*Ibid.*) An assessment based on unreported income is presumed correct when the taxing agency introduces a minimal factual foundation to support the assessment. (*Ibid.*) Once FTB has met its initial burden, FTB's proposed assessment is presumed correct, and the taxpayer has the burden of proving that the assessment is incorrect. (*Ibid.*) FTB's determination must be upheld in the absence of credible, competent, and relevant evidence showing error in its determination. (*Ibid.*) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid.*)

Here, FTB estimated appellant's income based on the wage income reported by the Boeing Company, interest income reported by Dovenmuehle Mortgage, Inc., and retirement income reported by the Defense Finance and Accounting Service. Appellant's Forms W-2, 1099-R, and 1098 all showed a California address, and thus, FTB reasonably concluded appellant was a California resident. Accordingly, FTB's proposed assessment is presumed correct, and appellant has the burden to establish error in FTB's proposed assessment.

Appellant argues he was a Texas resident and retired from Boeing in December 2018. In support of his argument, appellant provided a pathology report from Mission Dermatopathology Laboratory, a paystub from the Defense Finance and Accounting Service, and a U.S. Federal Aviation Administration identification card issued in 2009. However, these documents do not state where appellant lived in 2018. These documents also do not explain why the Boeing Company and the Defense Finance and Accounting Service began reporting in 2018 that appellant's address was in California or why Dovenmuehle Mortgage, Inc. reported that appellant began paying mortgage interest on a property located in California in 2018.

Therefore, appellant has not established error in FTB's proposed assessment.

Issue 2: Whether appellant established reasonable cause to abate the late filing penalty.

California imposes a penalty for failing to file a required return on or before the due date, unless the taxpayer shows that the failure is due to reasonable cause and not due to willful neglect. (R&TC, § 19131.) To establish reasonable cause for the late filing penalty, the taxpayer must show that the failure to file a timely return occurred despite the exercise of ordinary business care and prudence or that such cause existed as would prompt an ordinarily prudent businessperson to have acted under similar circumstances. (*Appeal of Head and Feliciano*, 2020-OTA-127P.)


Here, appellant was required to file a 2018 tax return, but did not file one by the April 15, 2019 due date. Appellant has not explained how he exercised ordinary business care and prudence to timely file a tax return for tax year 2018. In fact, appellant has not made a specific reasonable cause argument, except to argue appellant believed he did not have a California filing requirement. However, ignorance of the law is not considered reasonable cause, even if the taxpayer is sincerely not aware of the filing requirement. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.)

HOLDINGS


1. Appellant has not established error in FTB’s proposed assessment.
2. Appellant has not established reasonable cause to abate the late filing penalty.

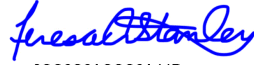
DISPOSITION

FTB’s action is sustained in full.

DocuSigned by:

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 Richard Tay
 Administrative Law Judge

We concur:

DocuSigned by:

 67F043D83EF547C...
 Sheriene Anne Ridenour
 Administrative Law Judge

DocuSigned by:

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 Teresa A. Stanley
 Administrative Law Judge

Date Issued: 3/18/2024