

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 230914369
J. MOORE)
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OPINION

Representing the Parties:

For Appellant: J. Moore
For Respondent: Alisa L. Pinarbasi, Attorney
For Office of Tax Appeals: Nguyen Dang, Attorney

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, J. Moore (appellant) appeals an action by the Franchise Tax Board (respondent) proposing tax of \$3,652, a late filing penalty of \$913, and applicable interest for the 2020 tax year.

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

ISSUE

Whether appellant has established error in respondent’s proposed assessment for the 2020 tax year.

FACTUAL FINDINGS

1. Appellant did not file a California income tax return (Return) for the 2020 tax year.
2. Through its Integrated Non-Filer Compliance (INC) program, respondent obtained California Employment Development Department wage information and third-party information returns (e.g., IRS Form 1099-NEC), indicating that appellant received income for the 2020 tax year sufficient to require the filing of a Return.
3. After requesting but not receiving a Return from appellant, respondent issued a Notice of Proposed Assessment (NPA) to appellant for the 2020 tax year for tax, which proposed to

assess tax and impose a late filing penalty, plus applicable interest, based on an estimate of appellant's income using the information obtained through the INC program.

4. Appellant protested the NPA.
5. Respondent issued a Notice of Action affirming its proposed assessment.
6. This timely appeal followed.

DISCUSSION

For the 2020 tax year, single individuals under the age of 65 with no dependents and gross income of at least \$18,496 or adjusted gross income of at least \$14,797, are required to file an income tax return. (R&TC, § 18501(a), (d).) Individual taxpayers filing on a calendar year basis are required to file their income tax returns on or before April 15th following the close of the calendar year. (R&TC, § 18566.)

A penalty is imposed for failing to file a return as required on or before the due date. (R&TC, § 19131(a).) In addition, if a taxpayer fails to file a return, respondent, at any time, may make an estimate of the net income from any available information and propose to assess tax, penalties and interest. (R&TC, § 19087(a).) A proposed deficiency assessment based upon third-party information reported to the government, as occurred here, is presumed correct and taxpayers bear the burden of proving error. (*Appeal of Wesley and Couchman* (05-SBE-002) 2005 WL 3106917.)

Appellant argues that respondent's proposed deficiency is erroneous because it is based entirely upon speculation, it fails to account for appellant's expenses, and appellant never received the income estimated by respondent. Appellant also takes issue with respondent's proposed deficiency on grounds that appellant did not yet file a Return because of a divorce. The Office of Tax Appeals understands this contention to mean that appellant disputes respondent's authority to issue a proposed assessment where a Return has not yet been filed.

Appellant is mistaken as to respondent's deficiency determination, which is not based on mere speculation or assumptions, but upon actual amounts reported by various third parties as having been paid to appellant during the 2020 tax year. Appellant provides no rebuttal evidence showing that appellant did not receive this income, and unsupported contentions are insufficient to establish error in respondent's deficiency determinations. (*Appeal of Chen and Chi*, 2020-OTA-021P.) Appellant is also in no position to criticize respondent for failing to account for appellant's alleged expenses when appellant has not provided any information to respondent regarding those expenses. (*Appeal of Shanahan*, 2024-OTA-039P.)

Finally, there is no suspension of the filing deadline due to a divorce. Therefore, when appellant failed to file a Return by the prescribed deadline, respondent was authorized by law to estimate appellant's income and issue the NPA. (R&TC, § 19087(a).) In other words, appellant's failure to file a Return in this case does not preclude respondent from determining that appellant owed taxes, a penalty and interest for the 2020 tax year.

Accordingly, appellant has not shown error in respondent's proposed assessment.

HOLDING

Appellant has not established error in respondent’s proposed assessment for the 2020 tax year.

DISPOSITION

Respondent’s action is sustained.

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Sara A. Hosey
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Sara A. Hosey
Administrative Law Judge

We concur:

DocuSigned by:
Kenneth Gast
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Kenneth Gast
Administrative Law Judge

DocuSigned by:
Josh Lambert
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Josh Lambert
Administrative Law Judge

Date Issued: 7/9/2024