

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
D. MALWAH) OTA Case No. 230212553
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OPINION

Representing the Parties:

For Appellant: D. Malwah

For Respondent: David Muradyan, Attorney

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, D. Malwah (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$557, penalties totaling \$281,¹ 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 has shown error in FTB’s proposed assessment of tax, which is based on an estimate of income for the 2018 tax year.
2. Whether appellant has shown reasonable cause for failing to file a timely return.

FACTUAL FINDINGS

1. Appellant did not file a California income tax return for the 2018 tax year.

¹ FTB imposed a late filing penalty of \$139.25 and a notice and demand (demand) penalty of \$141.75. FTB also imposed a filing enforcement fee of \$97. During this appeal, FTB decided to abate the demand penalty and the filing enforcement fee. As such, the demand penalty and filing enforcement fee are not in dispute and the Office of Tax Appeals (OTA) will not discuss them further.

2. FTB received information through its Integrated Non-Filer Compliance Program that appellant received income from various sources sufficient to trigger a 2018 California filing requirement.
3. On March 29, 2022, FTB issued appellant a Demand for Tax Return (Demand), requesting that appellant either file a 2018 California income tax return, show that they had already filed such a return, or explain why they did not have a filing requirement for the 2018 tax year.² FTB did not receive a response from appellant.
4. On June 17, 2022, FTB issued a Notice of Proposed Assessment (NPA) to appellant, based on FTB's estimate of appellant's income. Appellant protested the NPA. Subsequently, FTB issued a Notice of Action affirming the NPA.
5. This timely appeal followed.

DISCUSSION

Issue 1: Whether appellant has shown error in FTB's proposed assessment of tax, which is based on an estimate of income for the 2018 tax year.

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 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, 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. FTB'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 FTB has met this initial burden, the burden then shifts to the taxpayer to prove the proposed assessment is wrong. (*Ibid.*)

² FTB issued the Demand to an address in Lancaster, California. However, the available evidence indicates that for the 2018 tax year, appellant's address was either located in Los Angeles, California, or in Social Circle, Georgia. Thus, it is unclear whether appellant actually received the Demand. However, as noted above, FTB abated the demand penalty and the filing enforcement fee associated with the Demand.

Here, appellant did not file a return for the 2018 tax year. FTB received information from third-party payors, which indicated that appellant received income from the third parties during the 2018 tax year. FTB used this information to estimate appellant's income and determined that appellant had a 2018 return filing requirement. Accordingly, FTB'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.*)

On appeal, appellant has not provided any arguments or evidence to show that FTB's proposed assessment is incorrect. Instead, appellant requests that the tax be waived based on personal hardships. In support of this request, appellant provides medical records from 2022, which document appellant's health issues. Appellant also asserts that they have been a resident of Georgia for three years and did not receive correspondence from FTB.

However, appellant's personal hardship assertion does not prove that FTB's proposed assessment is incorrect. In the absence of credible, competent, and relevant evidence showing error in FTB's determination, the determination must be upheld. (*Appeal of Bindley, supra.*) Although the Office of Tax Appeals (OTA) is sympathetic to appellant's personal and financial hardships, OTA's function in the appeals process is to determine the correct amount of the taxpayer's California tax liability. (*Appeal of Robinson, 2018-OTA-059P.*) OTA thus lacks authority to make discretionary adjustments to a proposed assessment based on a taxpayer's ability to pay.³ (*Ibid.*) Finally, with respect to whether appellant received FTB's notices, R&TC section 18416(b) provides that any notice mailed to a taxpayer shall be sufficient if mailed to the taxpayer's last known address. In this case, FTB issued the NPA to appellant at their current address (as evidenced by appellant's opening brief). Furthermore, appellant filed a timely protest to the NPA. Accordingly, the NPA was received by appellant. Therefore, OTA finds no merit in appellant's arguments regarding receipt of notice. In summary, appellant has not shown that FTB's proposed assessment of tax for the 2018 tax year is incorrect.

³ Although OTA lacks jurisdiction to adjust a tax liability based on financial hardship, FTB may consider appellant's inability to pay under its payment arrangement or offer in compromise programs. (See <https://www.ftb.ca.gov/pay/if-you-cant-pay/index.html>.)

Issue 2: Whether appellant has shown reasonable cause for failing to file a timely return.

FTB 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. (R&TC, § 19131(a).) To establish reasonable cause, 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 intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of Head and Feliciano*, 2020-OTA-127P.)

When FTB imposes a penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) The burden of proof is on the taxpayer to show that reasonable cause exists to support an abatement of the late filing penalty. (*Ibid.*) To overcome the presumption of correctness that attaches to the penalty, a taxpayer must provide credible and competent evidence supporting a claim of reasonable cause; otherwise, the penalty cannot be abated. (*Ibid.*)

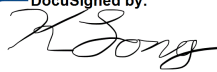
Here, appellant did not timely file a return for the 2018 tax year, which was due on or before April 15, 2019. As a result, FTB properly imposed the late filing penalty. However, appellant asserts that the late filing penalty should be abated based on personal hardships. In support, appellant provides medical records from 2022, documenting their health issues. Illness or other personal difficulties may be considered reasonable cause if the taxpayer presents credible and competent proof that they were continuously prevented from filing a tax return. (*Appeal of Belcher*, 2021-OTA-284P.) When a taxpayer alleges reasonable cause based on an incapacity due to illness, the duration of the incapacity must approximate that of the tax obligation deadline. (*Ibid.*) However, if the difficulties simply caused the taxpayer to sacrifice the timeliness of one aspect of their affairs to pursue other aspects, the taxpayer must bear the consequences of that choice. (*Ibid.*) OTA is sympathetic to appellant's hardship; however, appellant has not provided any evidence that they were continuously prevented from filing a timely return in the year that it was due (i.e., 2019). Instead, appellant's records document an illness that occurred several years later. As such, appellant has not met their burden of proof.

HOLDINGS

1. Appellant has not shown error in FTB’s proposed assessment of tax, which is based on an estimate of income for the 2018 tax year.
2. Appellant has not shown reasonable cause for failing to file a timely return.

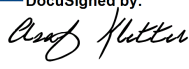
DISPOSITION

Subject to FTB’s concession to abate the demand penalty and filing enforcement fee, FTB’s action is otherwise sustained.

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Keith T. Long
 Administrative Law Judge

We concur:

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Asaf Kletter
 Administrative Law Judge

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Kenneth Gast
 Administrative Law Judge

Date Issued: 7/10/2024