

FACTUAL FINDINGS

1. Appellant, a California resident, has yet to file a California resident income tax return for the 2017 tax year.
2. FTB received information from the IRS and the California Employment Development Department (EDD) indicating that appellant received sufficient income in 2017 to trigger a filing requirement. Specifically, Uber Technologies, Inc. (Uber) and GEP Cencast LLC (GEP) reported that they made payments or paid wages to appellant. The amount collectively reported by Uber and GEP was greater than 17,029.¹
3. Consequently, FTB issued to appellant a Request for Tax Return for the 2017 tax year.
4. Appellant did not respond to the Request for Tax Return. Accordingly, FTB issued a Notice of Proposed Assessment (NPA) proposing to assess tax of \$2,406, a late filing penalty of \$601.50, and applicable interest. Appellant protested the NPA.
5. Thereafter, FTB issued both a position letter denying appellant's protest and a Notice of Action (NOA) affirming the NPA.
6. This timely appeal followed.

DISCUSSION

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

California imposes a tax on the entire taxable income of its residents. (R&TC, § 17041(a).) Every individual subject to California's personal income tax shall file a tax return stating, among other items, that individual's income and allowable deductions and credits. (R&TC, § 18501(a).) If an individual subject to California's personal income tax does not file a tax return, FTB may estimate the individual's net income from any available information, and based on that estimate, propose to assess the amount of tax, penalties, fees, and interest due. (R&TC, § 19087(a).)

If FTB proposes an assessment based on an estimate of income, its initial burden is to show why its assessment is reasonable and rational. (*Appeal of Bindley*, 2019-OTA-179P.) If

¹ A California resident's filing requirement is dependent upon, as relevant here, the individual's age, filing status, and number of dependents. FTB assumed (and appellant has not refuted) that for the 2017 tax year, appellant was a California resident, single and under the age of 65, and had no dependents. As such, if appellant's California gross income exceeded \$17,029 or his California adjusted gross income exceeded \$13,623, appellant had a California filing requirement for the 2017 tax year.

FTB meets this initial burden, the assessment is presumed correct, and the burden shifts to the taxpayer to prove it is erroneous. (*Ibid.*) Unsupported assertions are insufficient to satisfy the taxpayer's burden. (*Ibid.*)

Here, FTB estimated appellant's gross income for the 2017 tax year based on information it received from the IRS and EDD. Uber and GEP reported making payments to appellant that, when combined, was more than the amount sufficient to trigger a filing requirement for the 2017 tax year, as noted above. Therefore, FTB's proposed assessment was reasonable and rational and the burden shifts to appellant to prove the assessment is erroneous.

On appeal, appellant argues that FTB's proposed assessment was calculated using erroneous or incorrect facts. Appellant further argues FTB relied upon that information or data, which "result[ed] in an illegal or otherwise unlawful proposed amount pursuant to [the California Taxpayers' Bill of Rights]." In support of his argument, appellant points to the United States and California Constitutions, and "all laws, statutes, policies, and/or other regulatory provisions which emanate from said Constitutions"

Appellant, however, has not indicated how or why the income reported by Uber or GEP was erroneous, incorrect, or resulted "in an illegal or otherwise unlawful proposed amount." Nor has appellant pointed to any specific legal authority or evidence that supports his assertions, and unsupported assertions are insufficient to satisfy a taxpayer's burden. (*Appeal of Bindley, supra.*) In addition, as previously stated, FTB has statutory authority, pursuant to R&TC section 19087(a), to estimate an individual's net income when that individual fails to file a tax return, as appellant did here. Therefore, appellant has not met his burden to prove FTB's assessment is erroneous.

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

A late filing penalty will be imposed when a taxpayer fails to file a tax return on or before its due date, unless the taxpayer establishes that the late filing was due to reasonable cause and was not due to willful neglect. (R&TC, § 19131(a).) When FTB imposes a penalty, the law presumes that the penalty was imposed correctly, and the burden of proof is on the taxpayer to show that reasonable cause exists to support abating the penalty. (*Appeal of Xie, 2018-OTA-076P.*) 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 cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under

similar circumstances. (*Appeal of Belcher*, 2021-OTA-284P.) Unsupported assertions are insufficient to satisfy the taxpayer's burden of proof. (*Appeal of Xie, supra.*)

To date, appellant has not filed his 2017 tax return. Thus, FTB properly imposed the late filing penalty. Appellant has provided neither argument nor evidence addressing the late filing penalty. Therefore, appellant has failed to establish reasonable cause to abate the late filing penalty.

Issue 3: Whether appellant has established a basis upon which interest can be abated.

Imposing interest on a tax deficiency is mandatory. (R&TC, § 19101(a).) Interest is also charged on certain penalties. (R&TC, § 19101(c)(2).) Interest is not a penalty but is compensation for the taxpayer's use of money after it should have been paid to the state, and it can only be abated in certain limited situations when authorized by law. (*Appeal of Moy*, 2019-OTA-057P.) There is no reasonable cause exception to the imposition of interest. (*Ibid.*)

To obtain interest abatement, appellant must qualify under either R&TC section 19104 or R&TC section 21012.² First, R&TC section 19104 does not apply here because appellant does not allege, and the evidence does not show, that the interest at issue is attributable, in whole or in part, to any unreasonable error or delay by an officer or employee of FTB when performing a ministerial or managerial act. Second, R&TC section 21012 does not apply because appellant does not allege, and the evidence does not show, FTB provided appellant with any requested written advice. Accordingly, appellant has not established that he is entitled to interest abatement.

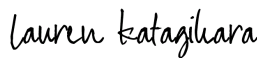
² Pursuant to R&TC section 19112, FTB also has discretion to waive interest, but the Office of Tax Appeals (OTA) does not have jurisdiction to review FTB's exercise of such discretion. (See *Appeal of Moy, supra.*)

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.
3. Appellant has not established a basis upon which interest can be abated.


DISPOSITION³

FTB’s action is sustained.

DocuSigned by:

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 Lauren Katagihara
 Administrative Law Judge

We concur:

DocuSigned by:

3AF5C32BB93B456...
 Kenneth Gast
 Administrative Law Judge

DocuSigned by:

48745BB806914B4...
 Josh Aldrich
 Administrative Law Judge

Date Issued: 3/26/2024

³ 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. Code Regs., tit. 18, § 30217.) Although OTA does not impose a frivolous appeal penalty in this proceeding, appellant’s position in this appeal suggests that such a penalty may be warranted in the future should appellant file or maintain another appeal with OTA raising similar or other frivolous arguments.