

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of: R. TEAGUE _____))))))	OTA Case No. 230513222
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OPINION

Representing the Parties:

For Appellant: R. Teague

For Respondent: Noel Garcia-Rosenblum, Attorney

For Office of Tax Appeals: Louis Ambrose, Attorney

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, R. Teague (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$3,215, a late filing penalty of \$803.75, 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.

ISSUES

1. Whether appellant has demonstrated error in FTB’s proposed assessment of tax for the 2020 tax year.
2. Whether appellant has established reasonable cause for the late filing of his 2020 tax return.

FACTUAL FINDINGS

1. FTB received information indicating that appellant had sufficient income during the 2020 tax year to require the filing of a tax return for that year.
2. Because appellant did not file a return for 2020, FTB issued appellant a Request for Tax Return (Request). The Request stated that FTB received information that appellant

received income from at least two different sources during 2020 which indicated he had a California tax return filing requirement and requested that appellant respond by November 16, 2022. The Request provided appellant with instructions for filing a 2020 return, submitting a copy of the return if it was already filed, and for determining whether appellant was required to file a California return. Appellant did not respond to the Request.

3. FTB issued appellant a Notice of Proposed Assessment (NPA) dated December 9, 2022, which proposed tax of \$3,215, a late filing penalty of \$803.75, plus applicable interest. Appellant filed a timely protest of the NPA. FTB issued a Notice of Action dated April 12, 2023, that affirmed the NPA.
4. Appellant then filed this timely appeal.

DISCUSSION

Issue 1: Whether appellant has demonstrated error in FTB's proposed assessment of tax for the 2020 tax year.

When FTB makes a proposed assessment based on an estimate of income, FTB's initial burden is to show why its proposed assessment is reasonable and rational. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509, 514 (*Todd*); *Appeal of Bindley*, 2019-OTA-179P (*Bindley*)). Once FTB has met its initial burden, the proposed assessment of tax is presumed correct, and the taxpayer has the burden of proving it to be wrong. (*Todd, supra*; *Bindley, supra*.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Bindley, supra*.) In the absence of credible, competent, and relevant evidence showing error in FTB's determination, the determination must be upheld. (*Ibid.*)

FTB received information from the IRS indicating that appellant received wages and other income for the 2020 tax year sufficient to require appellant to file a California income tax return. On that basis, FTB made an estimate of appellant's 2020 income. FTB's use of third-party information to estimate appellant's taxable income is both reasonable and rational. (*Bindley, supra*.) The Office of Tax Appeals (OTA) finds that it was reasonable and rational for FTB to rely on wage and other income information reported to the IRS. Appellant's wage and other income is taxable under California law. (R&TC, § 17071.) Thus, FTB has met its initial burden and appellant has the burden of proving FTB's proposed assessment is incorrect.

In the appeal letter, appellant states that he does not “make enough money after COVID 19” and questions FTB’s basis for the proposed assessment. He also states that he has a serious illness and “ask[s] for help in this matter.” However, appellant does not provide any evidence to establish error in FTB’s proposed assessment and there is no such evidence in the record. Hence, appellant has not met his burden of proof to show error in the proposed assessment, and it must be upheld.

While OTA is sympathetic to the financial hardship described by appellant, OTA lacks authority to make discretionary adjustments to the amount of a tax assessment based on a taxpayer’s ability to pay.¹ (*Appeal of Robinson*, 2018-OTA-059P.) Therefore, OTA has no legal basis upon which to help appellant by making any adjustments to the amount of FTB’s proposed assessment.

Issue 2: Whether appellant has established reasonable cause for the late filing of his 2020 tax return.

California imposes a penalty for failing to file a 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(a).) The late filing penalty is calculated at 5 percent of the tax due for each month or fraction of each month the return is late, with a maximum penalty of 25 percent of the tax due. (R&TC, § 19131(a).)

When FTB imposes a penalty, it is presumed to have been imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) A taxpayer may rebut this presumption by providing credible and competent evidence supporting abatement of the penalty for reasonable cause. (*Ibid.*) 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 prudent businessperson to have acted under similar circumstances. (*Appeal of Head and Feliciano*, 2020-OTA-127P.)

FTB established that appellant received sufficient income for the 2020 tax year to require the filing of a return. However, as of the date briefing closed, appellant has not filed a return and has not provided any explanation or evidence for his failure to do so. Thus, appellant has not

¹ Although OTA lacks jurisdiction to adjust a final liability based on financial hardship or willingness to settle, FTB may consider appellant’s inability to pay under its payment arrangement or offer in compromise programs when this appeal is final. (See <https://www.ftb.ca.gov/pay/if-you-cant-pay/index.html>.)


shown that the failure to file a return occurred despite the exercise of ordinary business care and prudence.

HOLDINGS

1. Appellant has not demonstrated error in FTB’s proposed assessment of tax for the 2020 tax year.
2. Appellant has not established reasonable cause for the late filing of his 2020 tax return.

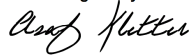
DISPOSITION

FTB’s action is sustained.

Signed by:

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 Josh Lambert
 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: 8/16/2024