

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 230814172
M. SCANLAN)
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OPINION

Representing the Parties:

For Appellant: M. Scanlan

For Respondent: Eric R. Brown, Attorney

For Office of Tax Appeals: Nguyen Dang, Attorney

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, M. Scanlan (appellant) appeals an action by the Franchise Tax Board (respondent) proposing tax of \$4,728, a late-filing penalty of \$1,182, 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 shown error in respondent’s proposed assessment for the 2020 tax year.
2. Whether a frivolous appeal penalty should be imposed.

FACTUAL FINDINGS

1. Appellant did not file a 2020 California income tax return (Return).
2. Through its Integrated Non-Filer Compliance Program, respondent obtained third-party information returns (i.e., IRS Forms 1099-K, W-2, and 1099-INT) from which respondent determined that appellant received income 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) proposing tax, a late-filing penalty, and applicable interest, based on an estimate of appellant's income using payment and income information reported on these third-party returns.
4. Appellant protested the NPA.
5. After considering appellant's protest, respondent issued a Notice of Action affirming its proposed assessment.
6. This timely appeal followed.
7. Respondent points out in its opening brief that appellant's contentions have been identified by the IRS and rejected by federal courts as frivolous.
8. Respondent provides a Law Summary marked as Exhibit E, expressly informing appellant that maintaining a frivolous position on appeal may result in the imposition of a frivolous appeal penalty.
9. Appellant filed a reply brief adhering to the same arguments which respondent notes are frivolous.

DISCUSSION

Issue 1: Whether appellant has shown error in respondent's proposed assessment for the 2020 tax year.

For the 2020 tax year, single individuals under the age of 65 with no dependents and gross income of more than \$18,496 or adjusted gross income of more than \$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).) It is well established that a proposed deficiency assessment based upon third-party information returns, as occurred here, is presumed correct and that taxpayers bear the burden of proving error. (*Appeals of Wesley and Couchman* (05-SBE-002) 2005 WL 3106917.)

Appellant's contentions pertaining to respondent's proposed assessment consist entirely of frivolous arguments provided as justification for appellant's failure to comply with the requirements of the Personal Income Tax Law (PITL). For instance, appellant argues that appellant is unable to file a Return because doing so would result in self-perjury, and that the PITL does not apply to appellant because appellant is not a U.S. citizen, resident alien, or employee, and appellant, as a non-resident alien, is not subject to tax because appellant was not engaged in the performance of the functions of a public office and did not receive income from a trade or business.

As noted in respondent's opening brief, these and other similar arguments have been consistently and emphatically rejected by the State Board of Equalization and the courts as groundless and frivolous. (*Appeal of Myers* (01-SBE-001) 2001 WL 37126924; *Appeals of Bailey* (92-SBE-001) 1992 WL 44503; *Appeal of Castillo* (92-SBE-020) 1992 WL 202571; *Appeals of Dauberger, et al.* (82-SBE-082) 1982 WL 11759.) The Office of Tax Appeals (OTA) therefore declines to address appellant's arguments any further because "to do so might suggest that these arguments have some colorable merit." (*Crain v. Commissioner* (5th Cir. 1984) 737 F.2d 1417; see also *McCoy v. Commissioner* (1981) 76 T.C. 1027, 1029 [explaining the need to deal with tax protester cases "summarily and decisively" to avoid disrupting the orderly conduct of serious litigation before the court].)

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

Issue 2: Whether a frivolous appeal penalty should be imposed.

OTA is “not obliged to suffer in silence the filing of baseless, insupportable appeals presenting no colorable claims of error and designed only to delay, obstruct, or incapacitate the operations [of the government].” (*Crain v. Commissioner, supra*, 737 F.2d at p. 1418.) R&TC section 19714 provides that a penalty of up to \$5,000 shall be imposed whenever it appears to OTA that the taxpayer’s position on appeal is frivolous or has been filed or maintained primarily for the purpose of delay. (See also Cal. Code Regs., tit. 18, § 30217(a).) A non-exclusive list of factors that OTA will consider in determining whether to impose the penalty and its amount, include whether the appellant:

- (1) is making arguments that OTA or the State Board of Equalization, in a precedential Opinion, or courts have rejected;
- (2) is making the same arguments that the same appellant made in prior appeals;
- (3) submitted the appeal with the intent of delaying legitimate tax proceedings or the legitimate collection of tax owed;
- (4) has a history of submitting frivolous appeals or failing to comply with California’s tax laws; or
- (5) has been notified, in a current or prior appeal, that a frivolous appeal penalty may apply.

(Cal. Code Regs., tit. 18, § 30217(b)(1)-(5).)

The record indicates that respondent notified appellant that a frivolous appeal penalty may be imposed if appellant continued with its position on appeal. Despite this warning, appellant did not offer any non-frivolous arguments in response but instead chose to maintain this position, which OTA finds above to be patently frivolous. The cost of processing an appeal is significant, and OTA has found that a frivolous appeal penalty is warranted to deter future frivolous appeals, even for first time offenses. (*Appeal of Balch*, 2018-OTA-159P.)

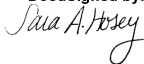
Accordingly, a frivolous appeal penalty of \$500 is hereby imposed. Appellant is further warned that if appellant persists in submitting frivolous appeals, a greater frivolous appeal penalty may follow.

HOLDINGS

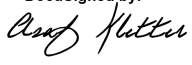
1. Appellant has not shown error in respondent’s proposed assessment for the 2020 tax year.
2. A frivolous appeal penalty of \$500 shall be imposed.


DISPOSITION

Respondent’s action is sustained.

DocuSigned by:

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 Sara A. Hosey
 Administrative Law Judge

We concur:

DocuSigned by:

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 Asaf Kletter
 Administrative Law Judge

DocuSigned by:

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 Veronica I. Long
 Administrative Law Judge

Date Issued: 7/18/2024