

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
**R. JOHNSON** ) OTA Case No. 231014563  
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**OPINION**

Representing the Parties:

For Appellant: R. Johnson

For Respondent: Lawrence Xiao, Attorney

S. KIM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, R. Johnson (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$1,107, a late filing penalty of \$276.75, and applicable interest for the 2019 tax year.

Appellant waived the right to an oral hearing; therefore, the matter was submitted to the Office of Tax Appeals (OTA) on the written record pursuant to California Code of Regulations, title 18, section 30209(a).

**ISSUES**

1. Whether appellant has demonstrated error in FTB’s proposed assessment.
2. Whether appellant has established reasonable cause to abate the late filing penalty.

**FACTUAL FINDINGS**

1. Appellant did not file a 2019 California resident income tax return.
2. FTB obtained Form W-2 information showing that appellant earned \$44,419 of wages in 2019. FTB determined that appellant earned sufficient income to prompt a filing requirement for the 2019 tax year.
3. FTB issued appellant a Request for Tax Return for the 2019 tax year, requesting that appellant file a return or explain why appellant did not have a filing requirement. Appellant did not timely respond to the Request for Tax Return.

4. FTB later issued appellant a Notice of Proposed Assessment (NPA) which estimated appellant's income at \$44,419. The NPA also proposed additional tax of \$1,107, a late filing penalty of \$276.75, and applicable interest.
5. Appellant timely protested the NPA.
6. On September 15, 2023, FTB issued appellant a Notice of Action affirming the NPA.
7. Appellant timely filed this appeal.<sup>1</sup>

### DISCUSSION

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

R&TC section 19087(a) provides that if any taxpayer fails to file a return, 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. When FTB makes a proposed assessment based on an estimate of income, FTB's initial burden is to show why its proposed tax assessment is reasonable and rational. (*Appeal of Bindley*, 2019-OTA-179P.) Federal courts have held that the taxing agency need only introduce some evidence linking the taxpayer with the unreported income. (*Ibid.*) When a taxpayer fails to file a valid return, FTB's use of income information from third party sources to estimate a taxpayer's taxable income is a reasonable and rational method of estimating taxable income. (*Ibid.*) Once FTB has met its initial burden, the proposed assessment is presumed correct and the taxpayer has the burden of proving it wrong. (*Ibid.*) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid.*)

Here, appellant did not file a California income tax return for 2019. FTB obtained Form W-2 information showing appellant earned wages in 2019, which FTB used to estimate appellant's taxable income. Therefore, FTB has met its initial burden, and appellant bears the burden of showing error in FTB's determination.

Appellant contends that FTB's proposed assessment is a mistake because he did not work and was homeless in 2019. However, appellant has not provided any evidence to support his contention that he did not work in 2019, or that the information reported on the Form W-2 was inaccurate or erroneous. Accordingly, appellant has not demonstrated error in FTB's proposed assessment.

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<sup>1</sup> The total amount in dispute includes interest, but appellant does not present any specific arguments related to interest abatement. Therefore, OTA does not address whether appellant is entitled to interest abatement.

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

California imposes a penalty for the failure to file a tax return on or before the due date, unless it is shown that the failure is due to reasonable cause and not due to willful neglect. (R&TC, § 19131.) When FTB imposes a penalty, it is presumed that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) The burden of proof is on the taxpayer to provide credible and competent evidence supporting a claim of reasonable cause. (*Ibid.*) To establish reasonable cause, a taxpayer must show that the failure to file a timely tax 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.)


Here, appellant argues that he did not work in 2019 and that FTB’s proposed assessment is a mistake. Appellant does not make any specific arguments regarding the late filing penalty. Therefore, appellant has not established reasonable cause to abate the late filing penalty.

HOLDINGS


1. Appellant has not demonstrated error in FTB’s proposed assessment.
2. Appellant has not established reasonable cause to abate the late filing penalty.


DISPOSITION

FTB’s action is sustained.

DocuSigned by:  
  
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 Steven Kim  
 Administrative Law Judge

We concur:

DocuSigned by:  
  
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 Suzanne B. Brown  
 Administrative Law Judge

DocuSigned by:  
  
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 Asaf Kletter  
 Administrative Law Judge

Date Issued: 11/15/2024