

) OTA Case No. 240215344

<sup>3</sup> Appellant received income of \$86,352 based on a Form 1099-K and a Form 1099-NEC issued to appellant for the 2020 tax year.

3. On February 21, 2023, FTB issued appellant a Request for Tax Return.
4. On March 24, 2023, appellant requested a deferral. FTB approved the request for deferral, requiring appellant to file a return by April 28, 2023, but appellant did not respond.
5. On May 19, 2023, FTB issued appellant a Notice of Proposed Assessment (NPA) estimating appellant's taxable income, and proposing net tax of \$4,612, a late filing penalty of \$1,153, and accrued interest.
6. Appellant timely protested the NPA.
7. Then, FTB issued appellant a Notice of Action affirming the NPA.
8. Appellant timely filed this appeal.

### DISCUSSION

R&TC section 18501 requires every individual subject to the Personal Income Tax Law to make and file a return with FTB when certain filing thresholds are exceeded. (R&TC, § 18501(a).) If a taxpayer fails to file a return, FTB may, at any time, make an estimate of the net income from any available information and propose to assess the amount of tax, interest, and penalties due. (R&TC, § 19087(a).) When FTB proposes a tax assessment based on an estimate of income, FTB's initial burden is to show that its proposed assessment is reasonable and rational. (*Appeal of Bindley*, 2019-OTA-179P.) An assessment based on unreported income is presumed correct when FTB introduces a minimal factual foundation to support the assessment. (*Ibid.*) Once FTB has met its initial burden, FTB's proposed assessment is presumed correct and the taxpayer has the burden of proving that the assessment is incorrect. (*Ibid.*) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Ibid.*)

Here, appellant did not file a 2020 tax return, even after FTB issued a Request for Tax Return. Thus, FTB estimated appellant's 2020 income based on information reported on a Form 1099-K and Form 1099-NEC. FTB's use of Form 1099 information to estimate appellant's taxable income is both reasonable and rational. (See *Appeal of Bindley*, *supra*.) Therefore, FTB has met its initial burden, and appellant must show the assessment is incorrect.

Appellant does not dispute that he had a filing requirement for the 2020 tax year, nor does he dispute FTB's estimation of his taxable income. Instead, appellant appears to argue that FTB's proposed assessment was untimely, as appellant asserts "it's been so long" since the 2022 tax year. Appellant also argues that he has been unemployed since 2022, that he is unable to work due to health issues, and that he has no money or assets to pay the tax liability.

However, if a taxpayer fails to file a return for any taxable year, FTB may, *at any time*, make an estimate of net income from any available information and propose an assessment of tax, interest, and penalties due. (R&TC, § 19087.) Because appellant did not file a return, FTB's May 19, 2023 NPA was timely issued to appellant. Furthermore, OTA lacks the authority to make discretionary adjustments to the amount of a tax assessment based on an appellant's ability to pay. (*Appeal of Robinson*, 2018-OTA-059P.) OTA's function in the appeals process is to determine the correct amount of appellant's California income tax liability. (*Ibid.*) Because appellant has not presented any evidence demonstrating FTB's proposed assessment is incorrect, OTA lacks any basis on which to alter the assessment.

### HOLDING

Appellant has not demonstrated error in FTB's proposed assessment.

### DISPOSITION

OTA sustains FTB's action.

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*Steven Kim*

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Steven Kim  
Administrative Law Judge

We concur:

Signed by:

*Seth Elsom*

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Seth Elsom  
Hearing Officer

Signed by:

*Greg Turner*

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Greg Turner  
Administrative Law Judge

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