

In the Matter of the Appeal of:) OTA Case No. 240416007
M. COON)
))
))
))
))

1. Appellant did not file a timely California income tax return for the 2019 tax year.
2. FTB received information that appellant sold real property in California during the 2019 tax year and received income sufficient to require a return.
3. On September 19, 2023, FTB issued a Request for Tax Return requesting that appellant file a return or explain why no return was required. FTB did not receive a response from appellant.
4. On December 8, 2023, FTB issued a Notice of Proposed Assessment (NPA) proposing tax of \$6,142. FTB also imposed a late filing penalty of \$1,535.50 and applicable

interest. The NPA is based on income received from the sale of real property as reported by Green Apple Escrow Inc.

5. Appellant filed a timely protest and on April 16, 2024, FTB issued a Notice of Action affirming the NPA.
6. This timely appeal followed.

DISCUSSION

Issue 1: Whether appellant has shown error in the proposed assessment.

Every individual subject to the Personal Income Tax Law is required to make and file a return with FTB stating specifically the items of the individual's gross income from all sources and the deductions and credits allowable, if the individual has gross income or adjusted gross income exceeding certain filing thresholds. (R&TC, § 18501(a)(1)-(4).) 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 assessment based on an estimate of income is reasonable and rational. (*Appeal of Bindley*, 2019-OTA-179P.) An assessment based on unreported income is presumed correct when the taxing agency introduces a minimal factual foundation to support the assessment. (*Ibid.*) Once FTB has met its initial burden, the burden then shifts to the taxpayer to prove the proposed assessment is wrong. (*Ibid.*) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid.*)

Here, appellant failed to file a return for the 2019 tax year. FTB obtained information reported by Green Apple Escrow Inc., which FTB used to estimate appellant's taxable income. FTB's use of income information from third party sources to estimate appellant's income is both reasonable and rational. (*Appeal of Bindley*, *supra*.) Therefore, FTB's proposed assessment is presumed correct and appellant bears the burden of showing error in the determination.

On appeal, appellant asserts that he left California in 2014 and is now a resident of Arizona. As such, appellant states that he is not sure why there is a California tax liability. Here, OTA notes that, in California, residents are taxed on their entire taxable income (regardless of source), and nonresidents are taxed only on income from California sources. (R&TC, §§ 17041(a), (b) & (i), 17951.) California source income includes rent and proceeds realized from the sale or transfer of real property in this state. (Cal. Code Regs., tit. 18, § 17951-3.) Thus, even if appellant was a nonresident in 2019 (the year at issue), he was required to file a return for that year and pay tax on his sale of real property in this state.

Appellant has not provided any evidence that FTB's proposed assessment is incorrect. Specifically, appellant has not provided any evidence that he did not sell real property in this state during the 2019 tax year. Appellant's unsupported assertions are insufficient to meet his burden of proof. (See *Appeal of Bindley, supra*.)

Issue 2: Whether appellant has shown reasonable cause for the late filing of his 2019 return.

FTB imposes a late filing penalty on a taxpayer who fails to file a return by either the due date or the extended due date, unless it is shown that the failure was due to reasonable cause and not willful neglect. (R&TC, § 19131(a).) 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 intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of Head and Feliciano*, 2020-OTA-127P.)

When FTB imposes a penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) The burden of proof is on the taxpayer to show that reasonable cause exists to support an abatement of the late filing penalty. (*Ibid.*)

Here, appellant did not timely file a return for the 2019 tax year, which was due on or before April 15, 2020.¹ As a result, FTB properly imposed the late filing penalty. On appeal, appellant has not provided any explanation to show reasonable cause for his failure to file a return, and OTA finds no evidence of reasonable cause in the record. Accordingly, appellant has failed to meet his burden of proof.

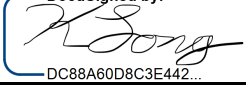
¹ In response to the Governor's March 12, 2020 Executive Order declaring a state of emergency related to COVID-19, FTB postponed the filing deadline for 2019 returns. Although the emergency declaration was not lifted until February 2023, the deadline to file 2019 returns was not extended beyond July 15, 2020. (See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2020-3-state-postpones-tax-deadlines-until-july-15-due-to-the-covid-19-pandemic.html>.)

HOLDINGS

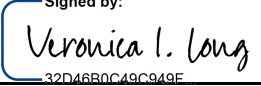
1. Appellant has not shown error in the proposed assessment.
2. Appellant has not shown reasonable cause for the late filing of his 2019 return.

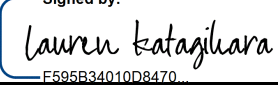
DISPOSITION

FTB's action is sustained.

DocuSigned by:

DC88A60D8C3E442...
Keith T. Long
Administrative Law Judge

We concur:

Signed by:

32D46B0C49C949E
Veronica I. Long
Administrative Law Judge

Signed by:

F595B34010D8470...
Lauren Katagihara
Administrative Law Judge

Date Issued: 3/6/2025