

FACTUAL FINDINGS

1. Appellant is a California resident and has yet to file a California resident income tax return for the 2018 tax year.
2. Through FTB's Integrated Non-Filer Compliance Program, FTB obtained information and determined that appellant earned sufficient income for the 2018 tax year to prompt a filing requirement. Specifically, Uber Technologies, Inc. (Uber) and GEP Cencast LLC (GEP) reported that they made payments or paid wages to appellant. The amount collectively reported by Uber and GEP was greater than \$17,693. However, FTB had no record that appellant filed a tax return for the 2018 tax year.
3. FTB issued appellant a Demand for Tax Return (Demand) for the 2018 tax year, which required appellant to file, provide evidence that he had already filed his 2018 California tax return, or respond with a completed questionnaire form showing that he had no filing requirement for the 2018 tax year.
4. Appellant promptly returned a completed questionnaire form and indicated that he was under the age of 65 in the 2018 tax year, but was uncertain about whether he had a filing requirement. Additionally, appellant explained that he was trying to resolve his tax liability for a different tax year and was having trouble finding records to file a 2018 tax year return.
5. On October 2, 2022, FTB issued a position letter that determined that appellant had a California filing requirement and must file a 2018 California personal income tax return by October 28, 2022. In relevant parts, FTB indicated that it would assess tax, a late filing penalty, a demand penalty, a filing enforcement cost recovery fee, and applicable interest if appellant filed after the October 28, 2022 deadline.
6. FTB did not receive a response or a filed tax return from appellant by the October 28, 2022 deadline; therefore, FTB issued a Notice of Proposed Assessment (NPA) proposing tax, a late filing penalty, a demand penalty, a filing enforcement cost recovery fee, and applicable interest for the 2018 tax year.
7. Appellant timely protested the NPA and asserted that the assessment was computed incorrectly.
8. FTB issued a Notice of Action affirming the NPA.
9. This timely appeal followed.

10. On appeal, FTB provides copies of a Request for Tax Return and an NPA issued for the 2017 tax year.
11. On March 26, 2024, OTA issued an Opinion in a prior appeal that did not impose a frivolous appeal penalty. However, the prior appeal clearly stated that appellant's positions and conduct "suggests that such a penalty may be warranted in the future should appellant file or maintain another appeal with OTA raising similar or other frivolous arguments."

DISCUSSION

Issue 1: Whether appellant has demonstrated error in FTB's determination that appellant has a filing requirement for the 2018 tax year and owes tax.

R&TC section 18501 requires every individual subject to the Personal Income Tax Law 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 an individual has gross income or adjusted gross income exceeding certain filing thresholds. (R&TC, § 18501(a)(1)-(4).) For the 2018 tax year, the filing threshold for a single individual under 65 years of age with no dependents is gross income of more than \$17,693 or adjusted gross income of more than \$14,154.¹

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." California imposes a tax on the entire taxable income of a resident, such as appellant. (R&TC, § 17041(a)(1).) 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*).)

Here, appellant has not refuted that he was a California resident, single, under the age of 65, and had no dependents for the 2018 tax year. Furthermore, the record shows that appellant, a California resident who is taxed on the entire taxable income (regardless of source), received income from Uber and GEP, which exceeded the \$17,693 gross income filing threshold in 2018.

¹ FTB annually adjusts the filing thresholds for tax years beginning on or after January 1, 1996. (See R&TC, § 18501(d).)

(See R&TC, § 17041(a).) Therefore, FTB’s proposed assessment was reasonable and rational and the burden shifts to appellant to prove the assessment is erroneous.

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.*) A taxpayer’s failure to produce evidence that is within his or her control gives rise to a presumption that such evidence is unfavorable to his or her case. (*Ibid.*)

On appeal, appellant provides frivolous arguments to support his unfounded theory that FTB relied upon erroneous or incorrect facts, information, or data, leading to an “an illegal or otherwise unlawful proposed amount pursuant to [the California Taxpayers’ Bill of Rights].” In support of his baseless claim, appellant references the United States and California Constitutions, and “all laws, statutes, policies, and/or other regulatory provisions which emanate from said Constitutions”²

However, frivolous arguments such as these do not establish that appellant was not required to report his income. (See *Appeal of Balch*, 2018-OTA-159P.) Here, appellant does not provide any non-frivolous argument or evidence as to how or why the income received and reported by Uber or GEP was erroneous or incorrect. There is no evidence or legal authority supporting the appellant’s assertions, and unsupported assertions are insufficient to satisfy a taxpayer’s burden. (*Bindley, supra.*) Therefore, appellant has not met the burden of proof to demonstrate error in FTB’s proposed assessment of tax.

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

R&TC section 19131 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. Generally, to establish reasonable cause, the taxpayer must show that the failure to file a timely return occurred despite the exercise of ordinary

² OTA will not address frivolous arguments “with somber reasoning and copious citation of precedent; [because] to do so might suggest that these arguments have some colorable merit.” (*Wnuck v. Commissioner*, (2011) 136 T.C. 498, 499, citing *Crain v. Commissioner* (5th Cir. 1984) 737 F.2d 1417, 1417.) OTA has no authority to resolve any grievances that appellant may have against FTB aside from the correct amount of appellant’s California income tax liability, if any. (*Appeals of Dauberger, et al.* (82-SBE-082) 1982 WL 11759.)

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 GEF Operating, Inc.*, 2020-OTA-057P.) Each taxpayer has a personal, non-delegable obligation to file a tax return by the due date. (*U.S. v. Boyle* (1985) 469 U.S. 241, 247.)

As of the close of the briefing period, the record indicates that appellant has still not filed a 2018 California tax return. Additionally, appellant has provided neither argument nor evidence addressing the late filing penalty. Moreover, appellant has not provided any evidence showing that appellant's failure to file the 2018 tax return occurred despite exercising ordinary business care and prudence. (*Appeal of GEF Operating, Inc.*, *supra.*) Therefore, appellant has failed to establish reasonable cause to abate the late filing penalty.

Issue 3: Whether appellant has shown that FTB incorrectly imposed the demand penalty.

R&TC section 19133 imposes a penalty when a taxpayer fails or refuses to furnish any information requested in writing by FTB or fails or refuses to make and file a return upon notice and demand by FTB, unless it is shown that the failure was due to reasonable cause and not willful neglect. A demand penalty is properly imposed if two criteria are met: (1) the taxpayer fails to respond to a current Demand in the manner prescribed; and (2), FTB has proposed an assessment of tax under the authority of R&TC section 19087(a), after the taxpayer failed to timely respond to a Request for Tax Return or Demand in the manner prescribed, for any taxable year within the four-taxable-year period immediately preceding the taxable year for which the current Demand is issued. (Cal. Code Regs, tit. 18, § 19133(b)(1)-(2).) A Demand means a written notice and demand for a return from the FTB, which advises the taxpayer that failure to respond in the manner provided and within the time prescribed will make the taxpayer liable for a penalty under R&TC section 19133 for failure to file upon notice and demand. (Cal. Code Regs., tit. 18, § 19133(c)(1).)

Here, appellant failed and refused to file his 2018 California tax return as demanded by FTB's October 2, 2022 position letter. The October 2, 2022 position letter provides written notice and demands that the appellant files his 2018 California tax return, which advises that failure to do so would make the appellant liable for the demand penalty under R&TC section 19133. In addition, FTB issued an NPA for the 2017 tax year after appellant failed to respond to the 2017 Request for Tax Return, which is within the four-taxable-year period preceding the 2018 tax year at issue. Therefore, FTB properly imposed the demand penalty.

Appellant provides no evidence, and the record contains no indication, that appellant had reasonable cause for failure to respond to the 2018 Demand for the same reasons as previously stated. Therefore, OTA finds no error in FTB's imposition of the demand penalty.

Issue 4: Whether there is a basis to abate the filing enforcement cost recovery fee.

R&TC section 19254(a) (2) provides that if a person fails or refuses to make and file a tax return within 25 days after a formal legal demand to file the tax return is mailed to that person, FTB must impose a filing enforcement cost recovery fee. Once properly imposed, the statute provides no grounds upon which the fee may be abated. (R&TC, § 19254.)

Here, appellant did not file the tax return within the time period prescribed by FTB's October 2, 2022 position letter, which informed appellant that the filing enforcement cost recovery fee would be imposed if appellant did not file a tax return by October 28, 2022. Therefore, FTB properly imposed the filing enforcement cost recovery fee and OTA has no basis to abate it.

Issue 5: Whether appellant has established that interest should be abated.

R&TC section 19101 provides that taxes are due and payable as of the original due date of the taxpayer's return (without regard to extension). If tax is not paid by the original due date or if FTB assesses additional tax and that assessment becomes due and payable, the taxpayer is charged interest on the resulting balance due, compounded daily. (R&TC, § 19101.) Interest is not a penalty, but is compensation for a taxpayer's use of money after it should have been paid to the state. (*Appeal of GEF Operating, Inc., supra.*) There is no reasonable cause exception to the imposition of interest, and interest is mandatory except where abatement is authorized under the law. (*Appeal of Moy*, 2019-OTA-057P.) Generally, to obtain relief from interest, taxpayers must qualify under one of the following three R&TC sections: 19104, 19112, or 21012. (*Ibid.*) OTA has no authority to review FTB's action under R&TC section 19112. (*Ibid.*) Here, appellant does not allege, and nothing in the record suggests, that there is any basis for interest abatement under R&TC 19104 and 21012. Therefore, appellant has not established that interest should be abated.

Issue 6: Whether a frivolous appeal penalty should be imposed.

R&TC section 19714 provides that a penalty of up to \$5,000 shall be imposed whenever it appears that proceedings before OTA have been instituted or maintained primarily for delay, or that the appellant's position is frivolous or groundless. (*Appeal of Balch, supra.*) California Code Regulations, title 18, (Regulation) section 30217(a) provides that OTA shall impose a frivolous appeal penalty pursuant to R&TC section 19714 “[i]f a Panel determines that a franchise or income tax appeal is frivolous or has been filed or maintained primarily for the purpose of delay.” Regulation section 30217(b) lists the following nonexclusive factors to be considered in determining whether, and in what amount, to impose a frivolous appeal penalty: (1) whether appellant is making arguments that OTA, in a precedential Opinion, or the State Board of Equalization (BOE), in a precedential Opinion, or courts have rejected; (2) whether appellant is making the same arguments that the same appellant made in prior appeals; (3) whether appellant submitted the appeal with the intent of delaying legitimate tax proceedings or the legitimate collection of tax owed; (4) whether appellant has a history of submitting frivolous appeals or failing to comply with California's tax laws; or (5) whether appellant has been notified, in a current or prior appeal, that a frivolous appeal penalty may apply.

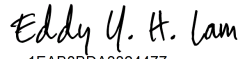
Appellant's arguments, such as FTB's actions violates the U.S. Constitution the California Taxpayers' Bill of Rights, are arguments that have been consistently rejected by the IRS, the courts, FTB, BOE, and OTA. (*See Appeal of Balch, supra.*) In a prior appeal before OTA (for the 2017 tax year), OTA issued an Opinion that did not impose a frivolous appeal penalty, but notified appellant that appellant's positions and conduct in the prior appeal “suggests that such a penalty may be warranted in the future should appellant file or maintain another appeal with OTA raising similar or other frivolous arguments.” Here, appellant continues to file an appeal that raises similar frivolous arguments. As such, OTA imposes a frivolous appeal penalty of \$800. If appellant submits further appeals that raise similar frivolous arguments, OTA will not hesitate to impose additional frivolous appeal penalties pursuant to R&TC section 19714, up to the maximum of \$5,000 per appeal.

HOLDINGS

1. Appellant has not demonstrated error in FTB’s determination that appellant has a filing requirement for the 2018 tax year and owes tax.
2. Appellant has not demonstrated reasonable cause to abate the late filing penalty.
3. Appellant has not shown that FTB incorrectly imposed the demand penalty.
4. There is no basis to abate the filing enforcement cost recovery fee.
5. Appellant has not established that interest should be abated.
6. A frivolous appeal penalty in the amount of \$800 is imposed against appellant.


DISPOSITION

FTB’s action is sustained, and a frivolous appeal penalty of \$800 is imposed.


DocuSigned by:

 1EAB8BDA3324477...

 Eddy Y.H. Lam
 Administrative Law Judge

We concur:

Signed by:

 25F8FE08FF56478...

 Natasha Ralston
 Administrative Law Judge

DocuSigned by:

 6D3FE4A0CA514E7...

 Sara A. Hosey
 Administrative Law Judge

Date Issued: 8/21/2024