Docusign Envelope ID: 7E654DC4-0F58-49DC-9FBF-6789A0D3427A

2025-OTA-398
Nonprecedential

OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Consolidated Appeals of:	OTA Case Nos. 22029644, 220510484, and 221011637
K. WILLIAMS	

OPINION

Representing the Parties:

For Appellant: K. Williams

For Respondent: Eric Brown, Attorney
Adam Susz, Attorney Supervisor

For Office of Tax Appeals: Amber Poon, Attorney

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, K. Williams (appellant) appeals actions by the Franchise Tax Board (respondent) proposing: (1) an assessment of tax of $3,819.50, a late filing penalty of $954.88, a demand penalty of $1,151.63,[1] plus interest for the 2017 taxable year; (2) an assessment of tax of $4,104.00, a late filing penalty of $1,026.00, a demand penalty of $1,050.75, plus interest for the 2018 taxable year; (3) an assessment of tax of $3,110.00, a late filing penalty of $777.50, a demand penalty of $777.50, plus interest for the 2019 taxable year; and (4) an assessment of tax of $5,151.00, a late filing penalty of $1,287.75, plus interest for the 2020 taxable year.

Office of Tax Appeals (OTA) Administrative Law Judges Amanda Vassigh, Andrew Wong, and Tommy Leung held an electronic hearing for this matter on September 19, 2024. At the conclusion of the hearing, the record was closed, and this matter was submitted for an opinion.

[1] In this case, respondent has determined that it will waive the 2017 demand penalty of $1,151.63.

ISSUES

1. Has appellant shown error in the proposed assessments for the 2017, 2018, 2019, and 2020 taxable years (taxable years at issue)?
2. Should the late filing penalties for the taxable years at issue be waived?
3. Should the demand penalties for the 2018 and 2019 taxable years be waived?
4. Does OTA have jurisdiction to determine if respondent properly imposed the frivolous return penalty and the frivolous submission penalty pursuant to R&TC section 19179 for the taxable years at issue?
5. Should a frivolous appeal penalty be imposed by OTA?

FACTUAL FINDINGS

2017 Taxable year

1. In 2017, appellant received over $80,000 in income, requiring her to file a 2017 California personal income tax return (Form 540).
2. In September 2019, respondent received appellant's 2017 Form 540 after she was sent a Demand for Tax Return (Demand).
3. Appellant's 2017 Form 540 claimed the head of household filing status, one dependent, total income of $0, tax of $0, withholding of $786, and refund of a reported overpayment of $786. Appellant also filed Form FTB 3525 claiming that she received incorrect Forms W-2 from her employers and an incorrect Form 1099-R from her financial institution, and/or was unable to obtain accurate forms from these payers. Appellant claimed that the reported income of $75,298.36, $540.00, and $5,500.00 from these payors were incorrect because appellant never received such income.
4. Subsequently, respondent issued a Notice of Tax Return Change – No Balance, informing appellant that her 2017 Form 540 resulted in a balance of $0. However, respondent later determined that appellant's 2017 Form 540 was frivolous. On September 24, 2020, respondent issued appellant a Notice of Frivolous Return Determination and Demand for Tax Return, informing appellant that her 2017 return was frivolous and demanding appellant to file a valid tax return within 30 days. Respondent also sent appellant a letter explaining its authority to assess, enforce, and collect taxes.

5. On October 27, 2020, respondent received appellant's letter and affidavit, alleging that appellant did not receive any taxable income, file a frivolous return, or receive proof from respondent that a frivolous return was filed for the 2017 taxable year. Appellant attached a copy of the Notice of Tax Return Change to support her position.
6. Appellant did not file a 2017 return in response to the Notice of Frivolous Return Determination.
7. On February 23, 2021, respondent issued a Notice of Frivolous Return Penalty and Demand for Payment, imposing a frivolous return penalty of $5,000 for appellant's original 2017 return.
8. On March 17, 2021, respondent issued a 2017 Notice of Proposed Assessment (NPA), which proposed a total tax of $4,606.50 (less withholding credits of $787.00), a late filing penalty of $954.88, a demand penalty of $1,151.63, plus interest.
9. Appellant timely protested the 2017 NPA. Appellant alleged that she did not file a frivolous return or receive proof from respondent that a frivolous return was filed for 2017. Appellant further argued that she did not receive any wages as an employee in a trade or business, or from any other federally connected activity. Appellant also admitted that the 2017 return was filed after the required deadline.
10. Appellant also responded to respondent's 2017 Notice of Frivolous Return Determination. Appellant alleged that the amounts reported on the Forms W-2 were incorrect and that she did not receive any "Federal and State connected wages."
11. On September 9, 2021, respondent issued appellant a Frivolous Submission Notice, indicating that appellant's protest to the 2017 NPA was found to be frivolous and that a frivolous submission penalty of $5,000 would be imposed if the protest was not withdrawn. Appellant did not withdraw her protest.
12. Consequently, respondent issued a Frivolous Submission Penalty notice, imposing a frivolous submission penalty of $5,000 for the 2017 taxable year.
13. In 2022, respondent issued a Notice of Action (NOA), affirming the 2017 NPA. The 2017 NOA also warned appellant that OTA "has regularly imposed up to a $5,000 penalty under Personal Income Tax Law Section 19714 on frivolous appeals."

<u>2018 Taxable year</u>

14. In 2018, appellant received over $80,000 in income, requiring her to file a 2018 Form 540.
15. In September 2019, respondent received appellant's 2018 Form 540, claiming head of household filing status, one dependent, total income of $0, tax of $0, withholding of $99, and refund of a reported overpayment of $99. Appellant filed Form FTB 3525 claiming that she received an incorrect Form W-2 and/or was unable to obtain an accurate form from her employer. Appellant also claimed that a reported income of $80,424.16 from her employer was incorrect because appellant never received such income.
16. Subsequently, respondent issued appellant a Notice of Tax Return Change – No Balance, informing appellant that her 2018 Form 540 resulted in a balance of $0.
17. In 2020, respondent issued appellant a Notice of Frivolous Return Determination and Demand for Tax Return, informing appellant that her 2018 Form 540 was frivolous and demanding appellant to file a valid tax return within 30 days. Respondent also sent appellant a letter explaining its authority to assess, enforce, and collect taxes.
18. In response, appellant submitted a letter and affidavit, alleging that appellant did not receive any taxable income, file a frivolous return, or receive proof from respondent that a frivolous return was filed for 2018.
19. In 2021, respondent issued a Notice of Frivolous Return Penalty and Demand for Payment, imposing a frivolous return penalty of $5,000 for appellant's original 2018 Form 540. Then, respondent issued appellant a 2018 NPA, which proposed a total tax of $4,203.00 (less withholding credits of $99.00), a late filing penalty of $1,026.00, a demand penalty of $1,050.75, plus interest.
20. Appellant protested, alleging that she did not receive any taxable income, file a frivolous return, or receive proof from respondent that a frivolous return was filed for 2018. Appellant further argued that she did not receive any wages as an employee in a trade or business, or from any other federally connected activity. Appellant also admitted that the 2018 Form 540 was filed after the required deadline.
21. Appellant also responded to the 2018 Notice of Frivolous Return Determination. Appellant alleged that the reported Form W-2 income was incorrect and that she did not receive any "Federal and State connected wages."

22. Respondent later issued appellant a Frivolous Submission Notice, indicating that appellant's protest to the 2018 NPA was found to be frivolous and that a frivolous submission penalty of $5,000 would be imposed if the protest was not withdrawn. Appellant did not withdraw her protest.
23. Consequently, respondent issued a Frivolous Submission Penalty notice, imposing a frivolous submission penalty of $5,000 for the 2018 taxable year. In 2022, respondent issued an NOA, affirming the 2018 NPA.

<u>2019 taxable year</u>

24. In 2019, appellant received over $70,000 in income, requiring her to file a 2019 Form 540.
25. On April 10, 2020, respondent received appellant's 2019 Form 540, wherein she claimed the head of household filing status, one dependent, total income of $0, tax of $0, and no withholding or overpayment. Appellant also filed Form FTB 3525 claiming that she received an incorrect Form W-2 and/or was unable to obtain an accurate form from her employer. Appellant also claimed that a reported income of $65,871.56 from her employer was incorrect because appellant never received such income.
26. In response, respondent issued appellant a Notice of Frivolous Return Determination and Demand for Tax Return, informing appellant that her 2019 return was frivolous and demanding appellant to file a valid tax return within 30 days. Respondent also sent appellant a letter explaining its authority to assess, enforce, and collect taxes.
27. Appellant responded, alleging that she did not receive any taxable income, file a frivolous return, or receive proof from respondent that a frivolous return was filed for 2019.
28. In 2021, respondent issued a Notice of Frivolous Return Penalty and Demand for Payment, imposing a frivolous return penalty of $5,000 for appellant's original 2019 Form 540. Respondent also issued appellant a 2019 NPA, which proposed a total tax of $3,110.00, a late filing penalty of $777.50, a demand penalty of $777.50, plus interest.[2]
29. In 2022, respondent issued appellant a Frivolous Submission Notice, indicating that appellant's protest of the 2019 NPA was found to be frivolous and that a frivolous

[2] The 2019 NPA does not include unreported 1099-MISC income of $1,067. In its opening brief, respondent stated that it does not intend to revise and reissue the 2019 NPA to include this income.

submission penalty of $5,000 would be imposed if the protest was not withdrawn. Appellant did not withdraw her protest.

30. After the protest hearing, respondent issued appellant a Notice of Determination, informing her that an NOA to affirm the 2019 NPA would be issued. Then, respondent issued a Frivolous Submission Penalty notice, imposing a frivolous submission penalty of $5,000 for the 2019 taxable year.

2020 Taxable year

31. In 2020, appellant received over $92,000 in income, requiring her to file a 2020 Form 540.
32. On March 1, 2021, respondent received appellant's 2020 Form 540, wherein she claimed the head of household filing status, one dependent, total income of $0, tax of $0, and no withholding or overpayment. Appellant filed Form FTB 3525 claiming that she received an incorrect Form W-2. Appellant also asserted that the reported income amounts from her employer and financial institution were incorrect because appellant never received such income and/or such amounts are improperly treated as taxable income.
33. In response, respondent issued appellant a Notice of Frivolous Return Determination and Demand for Tax Return, informing appellant that her 2020 return was frivolous and demanding appellant to file a valid tax return within 30 days.
34. Appellant responded, alleging that she did not receive any taxable income, file a frivolous return, or receive proof from respondent that a frivolous return was filed for 2020.
35. In 2022, respondent issued appellant a 2020 NPA, which proposed a total tax of $5,151.00 and a late filing penalty of $1,287.75, plus interest.
36. Appellant protested the 2020 NPA, contending that she did not receive any taxable income, file a frivolous return, or receive proof from respondent that a frivolous return was filed for 2020.
37. Respondent also issued appellant a Frivolous Submission Notice, indicating that appellant's protest to the 2020 NPA was found to be frivolous and that a frivolous submission penalty of $5,000 would be imposed if the protest was not withdrawn. Appellant did not withdraw her protest.

38. Consequently, respondent issued a Frivolous Submission Penalty notice, imposing a frivolous submission penalty of $5,000 for the 2020 taxable year. Subsequently, respondent issued an NOA, affirming the 2020 NPA.
39. The parties do not dispute the computation of the proposed penalties.

DISCUSSION

Issue 1: Has appellant shown error in the proposed assessments for the taxable years at issue?

California residents are taxed upon their entire taxable income regardless of the source of that income. (R&TC, § 17041(a).) Every individual subject to the Personal Income Tax Law is required to make and file a return with respondent "stating specifically the items of the individual's gross income from all sources and the deduction and credits allowable . . . ." (R&TC, § 18501.) R&TC section 19087(a) provides in relevant part:

> If any taxpayer fails to file a return, or files a false or fraudulent return with intent to evade the tax, for any taxable year, the Franchise Tax Board, at any time, may require a return or an amended return under penalties of perjury or 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 respondent makes a proposed assessment of additional tax based on an estimate of income, respondent's initial burden is to show why its proposed assessment is reasonable and rational. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509.) An assessment based on unreported income is presumed correct when the taxing agency introduces a minimal factual foundation to support the assessment. (*In re Olshan* (9th Cir. 2004) 356 F.3d 1078, 1084.) Once respondent has met its initial burden, the proposed assessment of additional tax is presumed correct and the taxpayer has the burden of proving it to be wrong. (*Todd v. McColgan*, *supra*.) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of Scanlon*, 2018-OTA-075P.) In the absence of credible, competent, and relevant evidence showing error in respondent's determination, the determination must be upheld. (*Appeal of Davis and Hunter-Davis*, 2020-OTA-182P.)

"Gross income" and "adjusted gross income" (AGI) is defined by referring to and incorporating into California law Internal Revenue Code (IRC) sections 61 and 62, respectively. (R&TC, §§ 17071, 17072.) Unless otherwise provided, "gross income means all income from whatever source derived," including compensation for services, interest, dividends, and pensions.

(IRC, § 61(a).) Income generally includes any "accessions to wealth." (*Commissioner v. Glenshaw Glass Co*. (1955) 348 U.S. 426, 431.) Wages and compensation for services are gross income within the meaning of IRC section 61. (*U.S. v. Romero* (1981) 640 F.2d 1014, 1016; *Appeal of Balch*, 2018-OTA-159P.)

Every individual who has gross income or AGI that exceeds the minimum income threshold must file a tax return. (R&TC, § 18501(a)-(c).) For the 2017 taxable year, the filing threshold for single filers who are under the age of 65 with one dependent was $28,796 for gross income and $25,390 for AGI.[3] For the 2018 taxable year, the filing threshold under the same criteria was $29,926 for gross income and $26,387 for AGI.[4] For the 2019 taxable year, the filing threshold under the same criteria was $30,841 for gross income and $27,193 for AGI.[5] For the 2020 taxable year, the filing threshold under the same criteria was $31,263 for gross income and $27,564 for AGI.[6] In addition to satisfying specific requirements, taxpayers who claim the head of household (HOH) filing status – for taxable years beginning on or after January 1, 2015 – must file Form FTB 3532, Head of Household Filing Status Schedule, to report how the HOH filing status was determined.[7] Beginning in the 2018 taxable year, respondent denied HOH filing status for taxpayers who did not attach a completed Form FTB 3532 to their return.[8] Although appellant claimed HOH filing status for the taxable years at issue, the record does not show that she filed Forms FTB 3532 for those years. Therefore, the single filing status was applied when respondent determined appellant's tax liability.

Based on the Forms W-2 and Forms 1099 information for the taxable years at issue, respondent estimated appellant's income for each of those taxable years and correctly determined that appellant had a California filing requirement for those years. Because respondent established a minimal factual foundation for its determinations, the proposed assessments are

---

[3] See respondent's Publication 1031, https://www.ftb.ca.gov/forms/2017/17_1031.pdf.

[4] See respondent's Publication 1031, https://www.ftb.ca.gov/forms/2018/18_1031.pdf.

[5] See respondent's Publication 1031, https://www.ftb.ca.gov/forms/2019/2019-1031-publication.pdf.

[6] See respondent's Publication 1031, https://www.ftb.ca.gov/forms/2020/2020-1031-publication.pdf.

[7] See respondent's Publication 1540, https://www.ftb.ca.gov/forms/2017/17_1540.pdf.

[8] See 2018 Instructions for Form FTB 3532, Head of Household Filing Status Schedule, https://www.ftb.ca.gov/forms/2018/18-3532-instructions.html.

presumed correct, and the burden of proof shifts to appellant to show error in respondent's proposed assessments of tax.

Appellant argues that she did not receive any "Federal and State connected wages" or any wages as defined in IRC sections 3121(a) and 3401(a) to prompt a filing requirement for the taxable years at issue.[9] Appellant also argues that respondent's use of third-party wage and income information for its proposed assessments is improper because that income information was incorrect. Appellant alleges that the information is bad payer data – as defined in the IRM, Part 4, Chapter 2, Section 1, Subsection 24 – for treating "[n]ontaxable income reported as taxable."[10] However, the record shows that appellant received wages and payments, which must be included in her gross income, pursuant to IRC section 61.

Further, appellant produced a witness at her hearing, arguing that since the witness filed in the same manner as she did and received a refund, she is entitled to the same treatment. Although a review of the witness' Forms 540 and correspondence from respondent for the taxable years at issue reveal some similarities, there was conflicting evidence that cast doubt on appellant's claim. For example, appellant testified that she and the witness did not work for the same employer, and the witness's refunds were granted, at least in part, because of some math error, not because the witness did not receive income.

In short, appellant has not shown that her wages and other payments are excludible from gross income. Therefore, appellant has not met her burden of showing error in respondent's proposed assessments of tax.

Issue 2: Has appellant established reasonable cause to waive the late filing penalties for the taxable years at issue?

A late filing penalty is imposed when the tax return is not filed 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.) The late filing penalty is calculated at 5 percent of the tax for each month or fraction thereof that the return is late, with a maximum penalty of 25 percent of

---

[9] IRC section 3121(a) defines "wages" for federal payroll tax purposes under the Federal Insurance Contributions Act. (See Revenue Ruling 2004-110, https://www.irs.gov/pub/irs-drop/rr-04-110.pdf.) IRC section 3401(a) defines "wages" subject to federal income tax withholding at the source of compensation. To determine appellant's gross income for California tax purposes, the relevant (and more inclusive) code sections are discussed in this analysis.

[10] See Internal Revenue Manual, 4.2.1.24, https://www.irs.gov/irm/part4/irm_04-002-001.

the tax. (R&TC, § 19131(a).) When respondent imposes a penalty, it is presumed to have been imposed correctly. (*Appeal of Xie*, 2018-OTA-076P). A taxpayer may rebut this presumption by providing credible and competent evidence supporting waiver of the penalty for reasonable cause. (*Ibid.*)

Generally, 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 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.)

Appellant argues that she has no filing requirement and does not owe tax on the income received during the taxable years at issue. However, as prescribed by law (discussed above), appellant had sufficient income to require her to file forms 540 for those years. Appellant provided no evidence, and the record contains no indication, that appellant had reasonable cause for the failure to timely file her returns.[11] Therefore, appellant has not established reasonable cause to abate the late filing penalties.

In its briefing, respondent indicates that appellant's 2019 Form 540 was filed on April 10, 2020, and her 2020 Form 540 was filed on March 1, 2021, apparently before their respective due dates. However, a "zero return" (discussed below) is not a valid return for purposes of a taxpayer's filing requirement as prescribed under R&TC section 18501. (*Appeal of Reed*, 2021-OTA-326P.) Thus, while appellant filed her 2019 and 2020 Forms 540 before their respective due dates, appellant's zero return is not a valid return, which is a requirement to avoid imposition of the late filing penalty. (*Ibid.*; *Appeal of Hodgson* (2002-SBE-001) 2002 WL 245667.) Moreover, a "frivolous return" (also discussed below) subject to the penalty under IRC section 6702 does not qualify as a return for purposes of the penalty for failing to file a return. (See *Swanson v. U.S.* (11th Cir. 2020), 799 Fed. Appx. 668 (unpublished); *Lindberg v. Commissioner* (2010), T.C. Memo. 2010-67; Rev. Rul. 2007-19, I.R.B. 2007-14.)

[11] Appellant admitted in her 2017 and 2018 NPA protests that her returns were filed after the required deadline.

Issue 3: Has appellant established reasonable cause to waive the demand penalties for the 2018 and 2019 taxable years?

A penalty is imposed when a taxpayer fails to file a return or provide information upon respondent's notice and demand to do so, unless it is shown that the failure was due to reasonable cause and not willful neglect. (R&TC, § 19133.) For individuals, respondent will only impose a demand penalty if: (1) the taxpayer fails to timely respond to a current Demand for Tax Return in the manner prescribed; and (2) respondent issued an NPA after the taxpayer had failed to timely respond to a Request for Tax Return or a Demand for any prior four taxable years, immediately preceding the taxable year for which the current Demand is issued. (Cal. Code Regs., tit. 18, § 19133(b)(1)-(2).)

For the 2018 taxable year, the first requirement is met because appellant did not provide an adequate response to respondent's Demand issued on September 24, 2020, which informed appellant that her 2018 return was frivolous and demanded appellant to file a valid tax return within 30 days. The second requirement is also met because respondent issued an NPA for the 2017 taxable year after appellant failed to respond to a prior demand for tax return. Therefore, respondent properly imposed the demand penalty for 2018.

For the 2019 taxable year, the first requirement is met because appellant did not provide an adequate response to respondent's Demand issued on September 24, 2020, which informed appellant that her 2019 return was frivolous and demanded appellant to file a valid tax return within 30 days. The second requirement is also met because respondent issued an NPA for the 2018 taxable year after appellant failed to respond to a prior demand for tax return. Therefore, respondent properly imposed the demand penalty for 2019.

When a demand penalty is properly imposed, the burden is on the taxpayer to prove that reasonable cause prevented the taxpayer from timely responding to the Demand. (*Appeal of GEF Operating, Inc.*, *supra*.) To establish reasonable cause, a taxpayer must show that the failure to respond to the Demand occurred despite the exercise of ordinary business care or that the reason for failing to respond would prompt an ordinarily intelligent and prudent businessperson to act similarly under the circumstances. (*Ibid.*)

Appellant argues that she did not have a filing requirement for the 2018 and 2019 taxable years and that respondent's "penalties are baseless in law." However, the burden is on appellant to provide credible and competent evidence, showing that her failure to respond to the Demands

was due to reasonable cause. (See *Appeal of Belcher*, 2021-OTA-284P.) Appellant has not provided any specific argument regarding the demand penalties, and a review of the record does not show any facts and circumstances that would warrant a finding of reasonable cause. Therefore, appellant has failed to establish a basis to waive the demand penalties.

Issue 4: Does OTA have jurisdiction to determine if respondent properly imposed the frivolous return penalty and the frivolous submission penalty pursuant to R&TC section 19179 for the taxable years at issue?

Respondent shall impose a frivolous return penalty when a taxpayer filed a document that purports to be an income tax return, the return contained information that, on its face, indicated that the self-assessment was incorrect, and the defect was based on a position which respondent or the Secretary of the Treasury had identified as frivolous. (R&TC, § 19179 [which generally incorporates the provisions of IRC section 6702].) respondent may also impose a frivolous submission penalty under R&TC section 19179(c)(2) if a taxpayer filed a protest that is based on an identified frivolous position. (See also IRC, § 6702(b).) A taxpayer may avoid imposition of the frivolous submission penalty if within 30 days after respondent gives notice of the imposition of such penalties, the frivolous return or submission is withdrawn. (R&TC, § 19179(c)(1)(E).) Once imposed, the penalties may only be rescinded or compromised by respondent's Chief Counsel. (R&TC, § 19179(e).) respondent's Chief Counsel may not delegate that authority, and notwithstanding any other law or rule of law, the Chief Counsel's determination may not be reviewed in any administrative or judicial proceeding. (R&TC, § 19179(e)(2)-(3); *Appeal of Balch*, *supra*.)

Here, respondent imposed the frivolous return penalty and the frivolous submission penalty for the taxable years at issue. As noted above, there are no provisions under the law that allows OTA to review the imposition of these penalties. (R&TC, § 19179(e)(1)-(2); *Appeal of Reed*, *supra*.) Therefore, OTA does not have jurisdiction to review the imposition of these penalties.

Issue 5: Should the frivolous appeal penalty be imposed by OTA?

OTA may impose a penalty of up to $5,000 whenever it appears that a proceeding before it has been instituted or maintained primarily for delay or that the taxpayer's position in the

proceeding is frivolous or groundless.[12] (R&TC, § 19714.) OTA's Rules for Tax Appeals contain the following non-exclusive list of factors to be considered when determining whether to impose the penalty, and in what amount: (1) whether the taxpayer is making arguments that have been previously rejected by OTA in a precedential opinion, by BOE in a Formal Opinion, or by the courts; (2) whether the taxpayer is repeating an argument that was advanced unsuccessfully in prior appeals; (3) whether the taxpayer filed the appeal with the intent of delaying legitimate tax proceedings or the legitimate collection of tax owed; (4) whether the taxpayer has a history of filing frivolous appeals or failing to comply with California's tax laws; and (5) whether the taxpayer has been notified, in a current or prior appeal, that a frivolous appeal penalty might apply. (Cal. Code Regs., tit. 18, § 30217(b)(1)-(5).)

In this appeal, appellant has raised frivolous arguments that have been rejected consistently by OTA, BOE, and state and federal courts. Appellant has raised many of the same sorts of arguments that she raised during her protest with respondent, such as she has no California wages. However, the record does not show that appellant has appeared before OTA or the State Board of Equalization in the past making similar frivolous arguments.

For this reason, a $250 frivolous appeal penalty will be imposed this time, but appellant is hereby cautioned that OTA will not hesitate to impose a larger frivolous appeal penalty, up to the maximum of $5,000 per appeal, if appellant files additional appeals that raise similarly frivolous arguments.

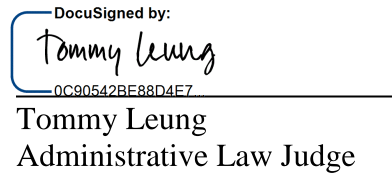
[12] R&TC section 19714 refers to proceedings before the "State Board of Equalization or any court of record." However, R&TC section 20(b) provides that this phrase now refers to OTA because BOE's authority to handle income and business tax appeals has been transferred to this agency.

HOLDINGS

1. Appellant has not shown error in the proposed assessments for the taxable years at issue.
2. Appellant has not established reasonable cause to waive the late filing penalties for the taxable years at issue.
3. Appellant has not established reasonable cause to waive the demand penalties for the 2018 and 2019 taxable years.
4. OTA does not have jurisdiction to review the imposition of the frivolous return or frivolous submission penalties for the taxable years at issue.
5. A $250 frivolous appeal penalty will be imposed by OTA.

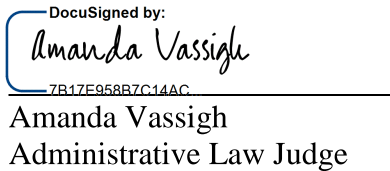
DISPOSITION

The Demand penalty for the 2017 taxable year is abated, pursuant to respondent's concession on appeal, and respondent's actions are otherwise sustained.

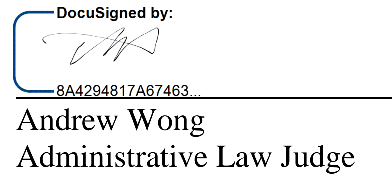


Tommy Leung
Administrative Law Judge

We concur:



Amanda Vassigh
Administrative Law Judge



Andrew Wong
Administrative Law Judge

Date Issued: 12/6/2024