

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:

J. OSSENMACHER) OTA Case No. 230914351
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)**OPINION**

Representing the Parties:

For Appellant:

J. Ossenmacher

For Respondent:

Paige Chang, Attorney

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, J. Ossenmacher (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$2,585.00, a late-filing penalty of \$646.25, and applicable interest for the 2020 taxable year.

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

ISSUES

1. Has appellant established error in FTB's proposed assessment?
2. Has appellant established reasonable cause to abate the late-filing penalty?

FACTUAL FINDINGS

1. For the 2020 taxable year, the Commonwealth of Massachusetts reported on a Form 1099-INT that appellant earned interest income of \$194; The Travelers Companies, Inc. reported on a Form 1099-DIV that appellant earned dividend income of \$180; Citigroup Inc. reported on a Form 1099-DIV that appellant earned dividend income of \$94; DTE Energy Company reported on a Form 1099-DIV that appellant earned dividend income of \$54; and Computershare reported on Forms 1099-B that appellant received total net proceeds of \$64,113 from the sale or exchange of securities. In total, these third parties reported that appellant received income of \$64,635.

2. FTB issued a Request for Tax Return (Request) to appellant stating that FTB did not have a record of receiving appellant's 2020 California return and had information showing that appellant earned sufficient income to prompt a filing requirement.
3. After appellant failed to respond to the Request, FTB issued a Notice of Proposed Assessment (NPA) to appellant. The NPA estimated appellant's income as \$64,635 based on the third-party reports. The NPA proposed tax of \$2,585.00 and a late-filing penalty of \$646.25, plus accrued interest.
4. Appellant timely protested the NPA, explaining that the proceeds he received from the sale of securities were from securities that he inherited, and the interest income he received was from Massachusetts' lost money fund.
5. FTB issued a Notice of Action affirming the NPA.
6. Thereafter, appellant filed this timely appeal.

DISCUSSION

Issue 1: Has appellant established error in FTB's proposed assessment?

Every individual subject to the Personal Income Tax Law is required to make and file a California return with FTB when his or her gross income exceeds certain thresholds. (R&TC, § 18501(a)(1)-(4).) If a taxpayer fails to file a return, then 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." (R&TC, § 19087(a).) FTB is given "great latitude" in estimating income when a taxpayer fails to file a return or provide the information necessary to ascertain his or her tax liability. (*Appeal of Shanahan*, 2024-OTA-039.)

If FTB proposes a tax assessment based on an estimate of income, then FTB's initial burden is to show that its proposed assessment is reasonable and rational. (*Appeal of Bindley*, 2019-OTA-179P.) A proposed 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.*) FTB's determination must be upheld in the absence of credible, competent, and relevant evidence showing error in its determination. (*Ibid.*)

Here, FTB estimated appellant's income as \$64,635 based on third-party income information reported to the IRS after appellant did not file a 2020 California tax return. FTB provided a copy of appellant's 2020 federal Wage and Income Transcript establishing that he

had income of \$64,635. Accordingly, FTB has met its initial burden of proof, and its proposed assessment is presumed correct.

On appeal, appellant argues that the proceeds from the sale or exchange of securities are not taxable because appellant inherited the securities. Appellant also argues that money received from the Commonwealth of Massachusetts is not taxable because it was a refund of an overpayment from Massachusetts' lost money fund. However, appellant has not provided evidence to support these assertions. OTA invited appellant to produce copies of the original Forms 1099-B, 1099-INT, and 1099-DIV. The Forms 1099-B are evidence that may show whether appellant has basis in the stock sold, and if so, what amount. Appellant also has not provided information showing the fair market value of the stock on the date of his father's death. (See IRC, § 1014(a)(1).)¹ Appellant's reply to OTA states that he was unable to obtain documents from the estate attorney. However, some of the documents OTA specifically requested are not estate documents but rather documents that would have been sent to appellant himself by the third-party payors. Appellant did not obtain documents from Computershare and Massachusetts to support his assertions. Neither did appellant provide information showing the date his father passed or what the fair market value of the stock was on the date of his father's death. Without support, assertions are insufficient to prove error in FTB's assessment. (*Appeal of Shanahan, supra.*) On appeal, appellant does not address the dividend income. Therefore, appellant has not met his burden of establishing error in FTB's proposed assessment.

Issue 2: Has appellant established reasonable cause to abate the late-filing penalty?

California imposes a penalty for failing to file a required return on or before the due date, unless the taxpayer shows that the failure is due to reasonable cause and not due to willful neglect. (R&TC, § 19131.) To establish reasonable cause for filing late, 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 prudent businessperson to have so acted under similar circumstances. (*Appeal of Head and Feliciano*, 2020-OTA-127P.)

¹ California conforms to IRC section 1014 per R&TC section 18031.

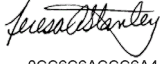
Here, appellant did not file a return for the 2020 taxable year, which was due on April 15, 2021.² FTB therefore properly imposed the late-filing penalty. Appellant does not dispute the imposition or the calculation of the late-filing penalty. Instead, appellant argues that his unreported income was not taxable. As discussed above, appellant has not provided any evidence to support this assertion. Therefore, appellant has not established reasonable cause to abate the late-filing penalty.

HOLDINGS

1. Appellant has not established 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 in full.

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Teresa A. Stanley
Administrative Law Judge

We concur:

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Asaf Kletter
Administrative Law Judge

Signed by:

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Josh Lambert
Administrative Law Judge

Date Issued: 6/4/2025

² In response to COVID-19, pursuant to R&TC section 18572, FTB postponed the 2020 individual tax filing due date from April 15, 2021, to May 17, 2021. (See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-03-state-tax-deadline-for-individuals-postponed-until-may-17-2021.html>.)