

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:	)	OTA Case No. 240716685
K. LU	)	
	)	
	)	
	)	

OPINION

Representing the Parties:

For Appellant: K. Lu

For Respondent: Vicki M. Leclerc, Program Specialist

E. PARKER, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19045, K. Lu (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$6,219, a late filing penalty of \$1,554.75, and applicable interest for the 2021 tax year.

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

ISSUE¹

Whether appellant has established error in FTB's proposed assessment for the 2021 tax year.

FACTUAL FINDINGS

1. Appellant did not file a 2021 tax return.
2. FTB received information indicating that appellant made mortgage interest payments during the 2021 tax year totaling \$20,098. Based on that information, FTB sent appellant a Request for Tax Return (Request).

¹ Appellant does not provide arguments related to the late filing penalty or interest; therefore, OTA does not discuss the late filing penalty or interest further.

3. When appellant failed to respond to the Request, FTB estimated appellant's income to be \$120,588 based on a ratio of income to mortgage interest paid (\$20,098 x 6).² FTB issued a Notice of Proposed Assessment (NPA) proposing to assess tax of \$6,219, a late filing penalty of \$1,554.75, and applicable interest.
4. Appellant protested the NPA and requested an additional 30 days to file his 2021 return.
5. After appellant failed to file his 2021 return, FTB issued a Notice of Action affirming the NPA.
6. 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 "stating specifically the items of the individual's gross income from all sources and the deductions and credits allowable," if the individual's gross income exceeds 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 "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 of additional tax based on an estimate of income, FTB's initial burden is to show why 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, the proposed assessment of additional tax is presumed correct and the taxpayer has the burden of proving it to be wrong. (*Ibid.*) In the absence of credible, competent, and relevant evidence showing error in FTB's determination, the determination must be upheld. (*Ibid.*)

FTB noted that appellant paid mortgage interest during the 2021 tax year but had not filed a return for that year. OTA concludes it was reasonable and rational for FTB to determine appellant had a filing obligation based on FTB's application of a 6:1 ratio of income-to-mortgage-interest-paid that showed appellant's estimated income to be in excess of the filing threshold for the 2021 tax year. As a result, OTA finds that FTB met its initial burden, and the burden shifts to appellant to show error in FTB's proposed assessment based on that estimate.

² FTB's four-year study of the relationship between taxpayers' income and mortgage interest payments indicates that, on average, taxpayers' income was 14.14 times the amount of mortgage interest paid. FTB's estimate of appellant's income was based on a more conservative ratio of 6:1 (mortgage interest paid x 6).

Upon filing this appeal, appellant states he would file his 2021 return within two weeks. However, FTB indicates in its opening brief, which was filed two months after appellant's request for appeal, that appellant's 2021 return still had not been filed. Despite having several opportunities to do so, appellant has not filed a 2021 return. Appellant provides no argument or evidence that demonstrates error in FTB's determination. In the absence of credible, competent, and relevant evidence showing error in FTB's determination, the determination must be upheld. Appellant has not met his burden to prove error in FTB's proposed assessment.

HOLDING

Appellant has not established error in FTB's proposed assessment for the 2021 tax year.

DISPOSITION

FTB's action is sustained.

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Erica Parker
Hearing Officer

We concur:

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Administrative Law Judge

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Josh Aldrich
Administrative Law Judge

Date Issued: 5/22/2025