OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **J. LUNT**	OTA Case No. 230112468

OPINION

Representing the Parties:

For Appellant: J. Lunt

For Respondent: David Muradyan, Attorney

S. ELSOM, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19045, J. Lunt (appellant) appeals an action by the Franchise Tax Board (respondent) proposing additional tax of $12,315, a late filing penalty of $3,078.75, and applicable interest for the 2018 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).

ISSUES

1. Whether appellant has established error in respondent's proposed assessment.
2. Whether appellant has established reasonable cause to abate the late filing penalty.

FACTUAL FINDINGS

1. Appellant did not file a timely California income tax return for the 2018 tax year.
2. Respondent obtained information indicating that appellant received income sufficient to require him to file a California income tax return. Accordingly, respondent sent appellant a Request for Tax Return (Request) to appellant's address in Coronado, California (California Address), requesting that he verify whether he had already filed a return, file a return if he had not, or state the reasons why he did not believe he had a filing requirement. Appellant did not respond to the Request.

3. Respondent subsequently sent appellant a Notice of Proposed Assessment (NPA) to appellant's address in Toston, Montana (Montana Address), notifying him that respondent had obtained information indicating appellant received the following income items: (1) wage income of $75,768 from Delta Master Retirement Trust and $21,180 from Delta Air Lines, Inc.; (2) miscellaneous income of $40,281 from Prudential Insurance Co. of America and $37,600 from The Entrust Group; and (3) interest income of $256 from Wells Fargo Bank, N.A. Based upon this information, respondent estimated that appellant received California taxable income of $170,684, proposed to assess tax of $12,315 (after application of California withholding credits of $576), and imposed a late filing penalty of $3,078.75, plus applicable interest.
4. On August 16, 2022, appellant protested the NPA, stating that he was a Montana resident, had no California source income in the 2018 tax year, and the California state income tax withheld from Delta Master Retirement Trust and Delta Airlines, Inc. was an error.
5. On September 14, 2022, respondent sent appellant a letter requesting additional information to decide appellant's protest. Respondent specifically requested a California income tax return, and corrected Forms W-2, Wage and Tax Statement, or a letter from the payer(s) showing the income received by appellant was not taxable in California.
6. On October 13, 2022, appellant sent respondent a jointly filed 2018 Montana state income tax return reporting an age of over 65 for appellant and his spouse and that they were full-year residents of Montana, and a letter stating that he paid income tax to the state of Montana and did not receive California source income during the 2018 tax year.
7. On October 15, 2022, appellant submitted a joint 2018 Form 540NR, California Nonresident or Part Year Resident Income Tax Return, reporting the Montana Address as appellant's address, California wages of $0, with a handwritten note stating, "CA [California] tax withheld on W-2 in error – should be MT [Montana]," federal adjusted gross income (AGI) of $211,743, no entries for California AGI, no entries for California taxable income, no payments, and $0 total tax. The return requested a refund of the "[a]mount on 2018 W-2" but did not state the amount of California withholdings reported on the W-2(s) or the refund amount requested.
8. On January 30, 2023, respondent sent appellant an Unable to Process Tax Documents letter stating that it was unable to process the incomplete return and requesting appellant provide a copy of a complete return within 30 days. Appellant did not respond.
9. Respondent subsequently sent appellant a Notice of Action affirming the NPA.

10. Appellant filed this timely appeal.
11. During this appeal, respondent sent appellant a letter dated April 10, 2023, requesting an explanation of the number of days that appellant resided at the California Address and any rental income received from the property at the California Address in 2018; the number of days appellant spent and/or resided in Montana and California during 2018; whether appellant or appellant's spouse received any California source income; and a complete 2018 Form 540NR tax return. Respondent requested, and OTA granted, four extensions in this appeal to enable appellant additional time to respond. To date, appellant has not provided a response.

DISCUSSION

Issue 1: Whether appellant has established error in respondent's proposed assessment.

California residents are taxed upon their entire taxable income regardless of source, while nonresidents are only taxed on income derived from California sources. (R&TC, §§ 17041(a), (b), & (i); 17951(a).) Every individual taxable under the Personal Income Tax Law is required to file a return with respondent, specifically stating 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 threshold amounts. (R&TC, § 18501(a).) If a taxpayer fails to file a return, respondent may, at any time, make an estimate of the net income from any available information and propose an assessment of tax, interest, and penalties due. (R&TC, § 19087(a).) For 2018, taxpayers using the married filing jointly filing status who were over the age of 65 and had no dependents, had a California filing requirement if the taxpayers' California gross income was at least $47,188 or their California AGI was at least $40,112.

When respondent assesses tax based on an estimate of income, respondent has the initial burden to show that its assessment is reasonable and rational. (*Appeal of Sheward*, 2022-OTA-228P.) An assessment based on unreported income is presumed correct when the taxing agency introduces a minimal factual foundation to support the assessment. (*Ibid.)* The taxing agency need only introduce some evidence linking the taxpayer with the unreported income. (*Ibid*.) When a taxpayer fails to file a valid return, respondent's use of income information from various sources to estimate a taxpayer's taxable income is a reasonable and rational method of estimating taxable income. (*Ibid*.) Once respondent has met its initial burden, the assessment is presumed correct, and the taxpayer has the burden of proving error in the assessment. (*Ibid*.)

Here, respondent received federal Forms W-2 reporting that appellant had California tax withholdings on wage income exceeding the filing threshold and had a California address on file indicating that he may have resided in California during the 2018 tax year, but had not filed a California return. Respondent has thus met its initial burden, and its assessment is presumed correct. (*Appeal of Sheward*, *supra*.) Appellant has the burden of proving error in respondent's assessment. (*Ibid*.) Appellant does not dispute that he had California withholdings during the 2018 tax year but asserts that he has only "occasional and intermittent [California] tax obligations," the California withholdings were in error, and he paid tax to the state of Montana. Thus, appellant asserts that he did not receive any California source income during the 2018 tax year.

R&TC section 17071 generally incorporates Internal Revenue Code (IRC) section 61, which defines "gross income" in relevant part to include compensation for services. (IRC, § 61(a)(1).) When personal services are performed in California, the source of the income is within this state. (Cal. Code Regs., tit. 18, § 17951-5; *Appeal of Cremel and Koeppel*, 2021-OTA-222P.) Here, appellant does not provide evidence establishing that all of the 2018 wage income was earned while he was a nonresident of California. Appellant also fails to provide contracts, statements from his employer, or any other evidence to prove that he provided services, that were subject to California wage withholdings, outside of the state of California during the 2018 tax year. Additionally, while appellant contends that he was a nonresident of California for the entirety of 2018, appellant does not provide any evidence to support this assertion. Appellant does not explain when he moved from California to Montana and does not explain the number of days he or his spouse resided at the California Address versus the Montana Address in 2018. Thus, appellant has not met his burden of proof to establish that he received the miscellaneous and interest income outside of the state of California during the 2018 tax year.[1] Based upon the record in this appeal, appellant has not satisfied his burden of proving error in respondent's assessment. (*Appeal of Sheward*, *supra*.)

<u>Issue 2: Whether appellant has established reasonable cause to abate the late filing penalty.</u>

R&TC section 19131(a) imposes a late filing penalty on a taxpayer who fails to file a return by either the original due date or the extended due date unless it is shown that the failure was due to reasonable cause and not due to willful neglect. To establish reasonable cause, the taxpayer must show that the failure to file a timely return occurred despite the exercise of

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[1] As stated above, California residents are taxed on all income from all sources (R&TC, §§ 17041(a), (b), & (i).). Appellant is taxed on all income received while residing in California during the 2018 tax year.

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.) The penalty is calculated at five percent of the tax liability for each month or fraction thereof the return is past due, up to a maximum of 25 percent. (R&TC, § 19131(a).)

When respondent 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 penalty. (*Ibid*.) To overcome the presumption of correctness, a taxpayer must provide credible and competent evidence supporting a claim of reasonable cause; otherwise, the penalty cannot be abated. (*Ibid*.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Bannon*, 2023-OTA-096P.)

As stated above, appellant has not established that his California gross income or California AGI was below the relevant filing thresholds established by California law for the 2018 tax year. Appellant's 2018 return was due April 15, 2019, and an automatic extension of six months was provided from the original due date of April 15, 2019, to October 15, 2019. (R&TC, §§ 18566, 18567; Cal. Code Regs., tit. 18, § 18567.) However, appellant has not yet filed a valid tax return for the 2018 tax year.[2] Therefore, respondent properly imposed the late filing penalty.

Appellant does not dispute respondent's calculation of the late filing penalty or provide a reasonable cause argument for the abatement of it. Instead, appellant appears to assert that respondent improperly imposed the late filing penalty based on the same argument he provides to establish error in respondent's proposed assessment; that he did not receive any California source income during the 2018 tax year. As stated above, appellant has not satisfied his burden to establish error in respondent's assessment. Thus, appellant's argument similarly does not establish error in respondent's imposition of the late filing penalty.

[2] Appellant provided respondent with a 2018 Form 540NR, California Nonresident or Part-Year Resident Income Tax Return, on October 15, 2022. However, the form was incomplete, and respondent was unable to process the return. In any event, the maximum 25 percent penalty was reached in September 2019, five months after the original filing deadline for the return on April 15, 2019.

HOLDINGS

1. Appellant has not established error in respondent's proposed assessment.
2. Appellant has not established reasonable cause to abate the late filing penalty.

DISPOSITION

Respondent's action is sustained.

Signed by:
Seth Elsom
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Seth Elsom
Hearing Officer

We concur:

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Teresa A. Stanley
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Teresa A. Stanley
Administrative Law Judge

Signed by:
Veronica I. Long
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Veronica I. Long
Administrative Law Judge

Date Issued: 9/4/2025