

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
T. DE ZENGREMEL) OTA Case No. 240817254
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OPINION

Representing the Parties:

For Appellant: T. De Zengremel
For Respondent: Andrea Watkins, Attorney

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, T. De Zengremel (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$12,357, a demand penalty of \$3,089.25, a late-filing penalty of \$3,089.25, a filing enforcement fee of \$108, and applicable interest for the 2019 taxable 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

Has appellant established error in FTB’s proposed assessment of tax?

FACTUAL FINDINGS

1. Appellant did not file a 2019 California tax return.
2. FTB issued a Demand for Tax Return (Demand) on September 19, 2023. FTB also issued a Demand for the 2018 taxable year (prior to the year at issue).
3. Appellant did not respond to the 2019 Demand, and FTB issued a Notice of Proposed Assessment (NPA) proposing tax of \$12,357, a demand penalty of \$3,089.25, a late-filing penalty of \$3,089.25, a filing enforcement fee of \$108, and applicable interest.

¹ Appellant’s appeal states only that “the taxable amount is incorrect.” Therefore, OTA does not address the penalties, interest, or filing enforcement fee.

The NPA estimated appellant's income based on a federal Schedule K-1 issued to appellant by Express Hospital Beds, LLC, which reported to the IRS that appellant received ordinary income of \$169,167.

4. Appellant protested the NPA, and FTB issued a Notice of Action affirming its NPA because appellant did not file a 2019 tax return or explain why he was not required to file.
5. Appellant filed this timely appeal.

DISCUSSION

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.) Every individual taxable under the Personal Income Tax Law is required to file a return with FTB, 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, FTB 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).)

When FTB assesses tax based on an estimate of income, FTB has the initial burden to show that its assessment is reasonable and rational. (*Appeal of Bindley*, 2019-OTA-179P.) An assessment based on unreported income is presumed correct when the taxing agency introduces a minimal factual foundation to support the assessment. (*Ibid.*) Federal courts have held that the taxing agency need only introduce some evidence linking the taxpayer with the unreported income. (*Appeal of Sheward*, 2022-OTA-228P.) When a taxpayer fails to file a valid return, FTB'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 FTB has met its initial burden, the assessment is presumed correct, and the taxpayer has the burden of proving error in the assessment. (*Ibid.*)

Here, FTB received third-party information, a Schedule K-1 issued by Express Hospital Beds, LLC, reporting that appellant received ordinary income of \$169,167 in 2019. As appellant did not file a tax return, FTB estimated appellant's 2019 income based on the federal Schedule K-1 and issued an NPA proposing tax of \$12,357. FTB has therefore established that its estimate is reasonable and rational and is based on evidence that links appellant with the income. Consequently, the burden of proof shifts to appellant to prove error in FTB's proposed assessment.

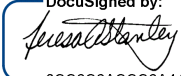
Appellant asserts only that “the taxable amount is incorrect.” At protest with FTB appellant asserted that the proposed tax was incorrect, and that FTB incorrectly used a filing status of single instead of head of household. Appellant provides no evidence to support these contentions. The simplest way for appellant to prove that FTB erred would be to file his 2019 tax return, which would report appellant’s gross income from all sources and the deductions and credits allowable, as required by R&TC section 18501(a). Filing a return would also give appellant an opportunity to claim the head of household filing status for which he contends he is eligible. Appellant failed to do so and provides no evidence but simply offers unsupported assertions. Unsupported assertions are insufficient to satisfy a taxpayer’s burden of proof. (*Appeal of GEF Operating Inc.*, 2020-OTA-057P.) Appellant, therefore, fails to meet his burden to prove error in FTB’s assessment which is based on a third-party report.

HOLDING

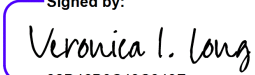
Appellant has not established error in FTB’s proposed assessment of tax.

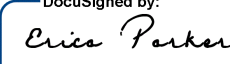
DISPOSITION

OTA sustains FTB’s proposed assessment.

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Teresa A. Stanley
Administrative Law Judge

We concur:

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Veronica I. Long
Administrative Law Judge

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Erica Parker
Hearing Officer

Date Issued: 7/15/2025