

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of:	)	OTA Case No. 240516126
<b>A. SCHOMBS</b>	)	
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**OPINION**

Representing the Parties:

For Appellant:	A. Schombs
For Respondent:	Eric R. Brown, Attorney

S. BROWN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, A. Schombs (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$5,509.60, a late filing penalty of \$1,377.40, a failure to file upon demand penalty (demand penalty) of \$1,401.75, and applicable interest for the 2020 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 demonstrated error in FTB's proposed assessment of tax.
2. Whether appellant has established reasonable cause to abate the late filing penalty.
3. Whether appellant has established reasonable cause to abate the demand penalty.

FACTUAL FINDINGS

1. Appellant did not timely file a California income tax return for the 2020 tax year.
2. Through FTB's Integrated Non-Filer Compliance Program, FTB obtained information indicating that appellant received income sufficient to require him to file a 2020 tax return.
3. On April 4, 2023, FTB issued to appellant a Demand for Tax Return (Demand), requiring that by May 10, 2023, appellant either file a 2020 tax return, send a copy of his 2020 tax return if one had already been filed, or explain why he was not required to file a 2020 tax return.
4. On May 1, 2023, appellant filed a 2020 California Resident Income Tax Return, reporting zero taxable income and zero total tax. The return reported \$97 total payments and claimed a refund of \$97.
5. On June 22, 2023, FTB sent appellant a Notice of Frivolous Return and Demand for Tax Return (Notice and Demand). The Notice and Demand stated that FTB determined that appellant's purported return is frivolous, and that if appellant failed to file a valid return, FTB would impose a frivolous return penalty of \$5,000. On several dates thereafter, appellant sent correspondence to FTB protesting the Notice and Demand, and arguing that he does not owe tax.
6. On October 6, 2023, FTB issued to appellant a Notice of Proposed Assessment (NPA) for the 2020 tax year, stating that because appellant had failed to file a valid tax return pursuant to the June 22, 2023 Notice and Demand, FTB proposed tax of \$5,509.60, a late filing penalty of \$1,377.40, and a demand penalty of \$1,401.75. On December 4, 2023, FTB received correspondence from appellant protesting the NPA.
7. On April 11, 2024, FTB issued to appellant a Notice of Action (NOA) affirming the NPA.
8. This timely appeal to OTA followed.
9. As relevant to the imposition of the demand penalty, FTB previously issued to appellant a Request for Tax Return for the 2018 tax year; appellant responded by filing multiple returns reporting zero taxable income and alleging that his wages are not taxable. On March 4, 2022, FTB issued appellant an NPA for the 2018 tax year, which became final. Similarly, for the 2019 tax year FTB issued to appellant a Demand dated October 27, 2021. On December 10, 2021, FTB issued to appellant an NPA for the 2019 tax year, which became final.

DISCUSSIONIssue 1: Whether appellant has demonstrated error in FTB's proposed assessment of tax.

In an action for refund, the taxpayer has the burden of proving entitlement to a refund by a preponderance of the evidence. (*Appeal of Estate of Gillespie*, 2018-OTA-052P; Cal. Code Regs., tit. 18, § 30219(a), (b).) The taxpayer must prove not only that FTB's determination of the tax liability is incorrect, but also the correct amount of tax owed. (*Appeal of Li*, 2020-OTA-095P.) Unsupported assertions are insufficient to satisfy the taxpayer's burden of proof. (*Appeal of Wright Capital Holdings LLC*, 2019-OTA-219P.) FTB's determinations cannot be successfully rebutted when taxpayers fail to provide credible, competent, and relevant evidence as to the issues in dispute. (*Ibid.*)

R&TC sections 17071 and 17072 define "gross income" and "adjusted gross income" by referring to and incorporating into California law Internal Revenue Code (IRC) sections 61 and 62, respectively. R&TC section 17041(a) provides that California residents shall be taxed upon their entire taxable income regardless of its source. IRC section 61 defines gross income as all income from whatever source derived, unless provided otherwise. Wages and compensation for services are gross income within the meaning of IRC section 61. (IRC, § 61(1); *U.S. v. Romero* (1981) 640 F.2d 1014, 1016; *Appeal of Balch*, 2018-OTA-159P.)

Here, the Form W-2 issued by appellant's employer reported wages paid to appellant during the 2020 tax year. Therefore, appellant must include the wages in gross income, pursuant to IRC section 61. (*U.S. v. Romero, supra*, 640 F.2d at p. 1016; *Appeal of Balch, supra.*)

Appellant does not provide any evidence showing error in FTB's proposed assessment of tax. Appellant makes frivolous arguments, such as that his income is not taxable because a state may not tax "Federal Reserve Notes." Such arguments have consistently been rejected by OTA, the Board of Equalization (OTA's predecessor), the IRS, and courts as frivolous and without merit. (See, e.g., *U.S. v. Buras* (9th Cir. 1980) 633 F.2d 1356; *Fox v. Commissioner*, T.C. Memo. 1996-79; *Appeal of Balch, supra*; *Appeals of Wesley and Couchman* (2005-SBE-002) 2005 WL 3106917.) OTA declines to address such frivolous arguments because "to do so might suggest that these arguments have some colorable merit." (*Crain v. Commissioner* (5th Cir. 1984) 737 F.2d 1417, 1417.) Accordingly, appellant has not shown error in FTB's proposed assessment of tax.

Finally, OTA is "not obliged to suffer in silence the filing of baseless, insupportable appeals presenting no colorable claims of error and designed only to delay, obstruct, or

incapacitate the operations [of the government].” (*Crain v. Commissioner*, supra, 737 F.2d at p. 1418.) R&TC section 19714 provides that a penalty of up to \$5,000 shall be imposed whenever it appears to OTA that the taxpayer’s position on appeal is frivolous or groundless. (See Cal. Code Regs., tit. 18, § 30217(a).) Although OTA does not impose a frivolous appeal penalty in this proceeding, appellant is warned that filing appeals based on these, or similar frivolous arguments, in the future may result in the imposition of the penalty.

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

R&TC section 19131 imposes a late filing penalty when a taxpayer fails to file a tax return before its due date, unless the taxpayer establishes that the late filing was due to reasonable cause and was not due to willful neglect. The filing of a return improperly reporting zero taxable income and zero tax is not a valid return and subjects the filer to various penalties. (*Appeal of Hodgson* (2002-SBE-001) 2002 WL 245667; see *Appeal of Reed*, 2021-OTA-326P.)

When FTB 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 abating the penalty. (*Ibid.*) 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 an ordinarily intelligent and prudent businessperson would have so acted under similar circumstances. (*Appeal of Belcher*, 2021-OTA-284P.)

Appellant’s 2020 tax return was due filed on May 17, 2021.<sup>1</sup> (R&TC, § 18566.) Nearly two years later, appellant filed a tax return reporting zero taxable income, despite his receipt of wage income. Appellant failed to file a valid tax return after receiving FTB’s Request for Tax Return and subsequent Notice and Demand. Appellant has not shown reasonable cause for his failure to file a valid tax return. Therefore, FTB properly imposed the late filing penalty.

Issue 3: Whether appellant has established reasonable cause to abate the demand penalty.

R&TC section 19133 provides that, if a taxpayer fails or refuses to furnish any information requested in writing by FTB or fails or refuses to make and file a return upon notice and demand by FTB, then, unless the failure is due to reasonable cause and not willful neglect, FTB may add a penalty of 25 percent of the amount of tax determined pursuant to R&TC section 19087 or of any deficiency tax assessed by FTB concerning the assessment for which

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<sup>1</sup> Due to the COVID-19 pandemic, FTB postponed the filing due date for 2020 tax returns from April 15, 2021, to May 17, 2021. (See <https://www.ftb.ca.gov/about-ftb/newsroom/2020-tax-year-extension-to-file-and-pay-individual.html>.)

the information or return was required. The demand penalty will only be imposed if: (1) the taxpayer fails to timely respond to a current Demand for Tax Return in the manner prescribed, and (2) FTB has proposed an assessment of tax under R&TC section 19087(a) after the taxpayer failed to timely respond to a Request for Tax Return or a Demand in the manner prescribed, for any taxable year that is within the four-taxable-year period immediately preceding the taxable year for which the current Demand is issued. (Cal. Code Regs., tit. 18, § 19133(b).)

FTB issued a Demand for the 2020 tax year. Appellant's responses to FTB contain frivolous arguments, which render them invalid. Consequently, appellant has not responded to the Demand in the manner prescribed by FTB. Furthermore, FTB issued an NPA within the preceding four years after appellant failed to provide a valid response to FTB's Request or Demand for the 2018 and 2019 tax years. Thus, FTB properly imposed the demand penalty for the 2020 tax year.

To establish that reasonable cause exists to support abatement of the demand penalty, a taxpayer must show that the failure to timely respond to the Demand occurred despite the exercise of ordinary business care and prudence. (*Appeal of Wright Capital Holdings, LLC, supra.*) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of GEF Operating, Inc., 2020-OTA-057P.*) As discussed above, appellant has failed to demonstrate that he exercised ordinary business care and prudence with respect to filing his 2020 return or responding to the Demand, and as such, OTA finds that appellant has not established reasonable cause to abate the demand penalty.

HOLDINGS

1. Appellant has not demonstrated error in FTB's proposed assessment of tax.
2. Appellant has not established reasonable cause to abate the late filing penalty.
3. Appellant has not established reasonable cause to abate the demand penalty.

DISPOSITION

FTB's action is sustained.

Signed by:

*Suzanne B. Brown*

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Suzanne B. Brown  
Administrative Law Judge

We concur:

Signed by:

*Seth Elsom*

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Seth Elsom  
Hearing Officer

DocuSigned by:

*Keith T. Long*

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Keith T. Long  
Administrative Law Judge

Date Issued: 4/10/2025