

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 240716707
D. ARCHER)
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OPINION

Representing the Parties:

For Appellant: D. Archer
For Respondent: David C. Cortez, Associate Government Program Analyst

A. VASSIGH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, D. Archer (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$4,082, a late-filing penalty of \$1,020.50, 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).

ISSUES

1. Whether appellant has established error in FTB’s proposed assessment of additional tax.
2. Whether appellant has shown reasonable cause to abate the late-filing penalty for the 2021 tax year.

FACTUAL FINDINGS

1. As part of its Integrated Non-Filer Compliance (INC) program, FTB obtained information which indicated that in 2021, appellant sold California property that triggered a California filing requirement for the 2021 tax year.

2. Since appellant had not filed a California tax return for 2021, FTB sent appellant a Request for Tax Return (Request), based on income from Fidelity National Title Company of California.
3. Appellant responded by letter, stating that he did not have documents pertaining to FTB's claims, and asked that FTB send him documents related to the Request.
4. FTB subsequently issued a Notice of Proposed Assessment (NPA). The NPA reflected appellant's income based on a Form 1099-S from Fidelity National Title Company of California. As a result of the income reported, FTB proposed a tax liability of \$4,082 and a late-filing penalty of \$1,020.50, plus applicable interest.
5. Appellant protested the NPA.
6. Subsequently, FTB sent appellant a Notice of Action, affirming the NPA.
7. Appellant then filed this timely appeal.
8. During this appeal, FTB stated in its opening brief that if appellant filed a 2021 tax return or "alternatively provide third-party documentation corroborating [his] statements that [he does] not have a California filing requirement, FTB will revise its position accordingly."
9. Appellant has not provided a 2021 tax return or documentation in support of his position during this appeal.

DISCUSSION

Issue 1: Whether appellant has established error in FTB's proposed assessment of additional tax.

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).) When FTB proposes a tax assessment based on an estimate of income, FTB's initial burden is to show that its proposed assessment is reasonable and rational. (*Appeal of Bindley*, 2019-OTA-179P.) 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.*) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid.*) FTB's determination must be upheld in the absence of credible, competent, and relevant evidence showing error in its determination. (*Ibid.*)

In this appeal, FTB's proposed assessment was based on information reported on federal Form 1099-S issued by Fidelity National Title Company of California. Appellant's 2021 Federal Wage and Income Transcript indicates that he received funds from the sale of real

property in Eureka, California, with a closing date of August 9, 2021. FTB estimated appellant's income based on the sale of that real property.

Appellant has the burden of proving that FTB's proposed assessment is incorrect. (*Appeal of Bindley, supra.*) In this appeal, appellant argues that he lived in Florida for the entirety of 2021 and was not required to file a California tax return; that FTB notified him of its proposed assessment but did not respond to his request for documentation in support of its calculation; that he believes "the 1998 Tax Act states that the 'burden of proof' is on the taxing authority" and that FTB has not met its burden; and that he has no idea what the basis is for FTB's proposed assessment. As explained above, FTB based the proposed assessment on the sale of the Eureka property. Page 3 of the NPA, which FTB sent to appellant, explains that FTB "obtained information that [appellant] received gross proceeds from the sale of California real estate in the tax year referenced. This information was reported on federal Form 1099-S, Proceeds From Real Estate Transactions, and/or California Form 593, Real Estate Withholding Tax Statement." FTB also shared that the real estate proceeds were reported by Fidelity National Title Company of California.

Finally, appellant appears to reference the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA). "The RRA contains over 60 provisions fortifying taxpayer rights and improving customer service, and its passage establishes new taxpayer rights." (*Strickland v. Commissioner, T.C. Memo. 2001-312.*) The RRA applies to the IRS and is not relevant to this appeal. As explained above, in this case the taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Bindley, supra.*)

Since appellant has not provided any information in support of his position that the FTB's proposed assessment of additional tax is erroneous, he has not met his burden of proof to establish error in FTB's proposed assessment of additional tax.

Issue 2: Whether appellant has shown reasonable cause to abate the late-filing penalty for the 2021 tax year.

R&TC section 19131(a) imposes a late-filing penalty on a taxpayer who fails to file a return by either the due date or the extended due date unless it is shown that the failure was due to reasonable cause and not willful neglect. When FTB imposes a late-filing penalty, it is presumed to have been correctly imposed, and the burden of proof is on the taxpayer to show that reasonable cause exists to abate the penalty. (*Appeal of Cremel and Koeppel, 2021-OTA-222P.*) To overcome the presumption of correctness, the taxpayer must provide credible and competent evidence supporting a claim of reasonable cause. (*Ibid.*) To establish

reasonable cause, the taxpayer must show that the failure to timely file a return occurred despite the exercise of ordinary business care and prudence. (*Ibid.*) Unsupported assertions are not sufficient to satisfy a taxpayer’s burden of proof. (*Appeal of Bannon, 2023-OTA-096P.*)


Appellant argues that he was not required to file a California tax return for 2021. However, appellant has not provided documents or other corroborating evidence supporting his position. Unsupported assertions are not enough to satisfy appellant’s burden of proof. (*Appeal of Bannon, supra.*) Accordingly, appellant has failed to meet the burden of proof to show reasonable cause.

HOLDINGS


1. Appellant has not established error in FTB’s proposed assessment of additional tax.
2. Appellant has not shown reasonable cause to abate the late-filing penalty for the 2021 tax year.

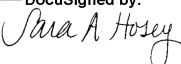
DISPOSITION

FTB’s action is sustained.

DocuSigned by:

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 Amanda Vassigh
 Administrative Law Judge

We concur:

Signed by:

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 Josh Lambert
 Administrative Law Judge

DocuSigned by:

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 Sara A. Hosey
 Administrative Law Judge

Date Issued: 11/4/2025