

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
M. MCGUIRE) OTA Case No. 220811064
)
)
)
)

OPINION

Representing the Parties:

For Appellant: M. McGuire

For Respondent: Christopher M. Cook, Attorney

C. AKIN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, M. McGuire (appellant) appeals actions by respondent Franchise Tax Board (FTB) proposing: additional tax of \$4,932, a late-filing penalty of \$1,233, and applicable interest for the 2018 tax year; and additional tax of \$4,746, a late-filing penalty of \$1,186.50, and applicable interest for the 2019 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 shown error in FTB’s proposed assessments for the 2018 and 2019 tax years.
2. Whether appellant has established reasonable cause to abate the late-filing penalty imposed for the 2018 and 2019 tax years.

FACTUAL FINDINGS

2018 Tax Year

1. Appellant did not file a California income tax return for the 2018 tax year.
2. FTB received information from Wells Fargo Bank indicating that appellant received interest income (Form 1099-INT) totaling \$45 for the 2018 tax year. Additionally, FTB received information from Defense Finance and Accounting Service, the U.S. Office of

- Personnel Management, and Wells Fargo Bank indicating that appellant received miscellaneous income and/or pension, annuity or retirement income (Forms 1099-MISC and/or 1099-R) of \$68,010, \$18,518, and \$2,925, respectively, during the 2018 tax year.
3. Based on this information, FTB determined that appellant had received sufficient income to require appellant to file a tax return for the 2018 tax year. As a result, FTB sent appellant a Request for Tax Return on May 18, 2021 (2018 Request), requesting that appellant respond by: (1) filing a 2018 tax return, (2) providing a copy of her 2018 tax return, if one had already been filed, or (3) providing information establishing that appellant did not have a filing requirement for the 2018 tax year.
 4. Appellant responded to the 2018 Request by requesting additional time to file her 2018 California income tax return. FTB granted three deferrals on July 9, 2021, August 3, 2021, and October 26, 2021.
 5. When appellant failed to file a 2018 tax return by the deadline provided in the October 26, 2021 deferral letter, FTB issued a Notice of Proposed Assessment (NPA). The NPA estimated appellant's income based on the information received from Wells Fargo Bank, Defense Finance and Accounting Service, and the U.S. Office of Personnel Management, and proposed tax of \$4,932, a late-filing penalty of \$1,233, and applicable interest.
 6. Appellant protested the NPA and FTB issued a Notice of Action (NOA) affirming the NPA.
 7. This timely appeal followed.

2019 Tax Year

8. Appellant did not file a California income tax return for the 2019 tax year.
9. FTB received information from Wells Fargo Bank indicating that appellant received interest income (Form 1099-INT) totaling \$64 for the 2019 tax year. Additionally, FTB received information from Defense Finance and Accounting Service, the U.S. Office of Personnel Management, and Wells Fargo Bank, that appellant received miscellaneous income and/or pension, annuity or retirement income (Forms 1099-MISC and/or 1099-R) of \$80,923, \$4,560, and \$3,125, respectively, during the 2019 tax year.
10. Based on this information, FTB determined that appellant had received sufficient income to require appellant to file a tax return for the 2019 tax year. As a result, FTB sent appellant a Request for Tax Return on December 14, 2021 (2019 Request), requesting that appellant respond by: (1) filing a 2019 tax return, (2) providing a copy of her 2019

- tax return, if one had already been filed, or (3) providing information establishing that appellant did not have a filing requirement for the 2019 tax year.
11. Appellant did not respond to the 2019 Request and FTB issued an NPA. The NPA estimated appellant's income based on the information received from Wells Fargo Bank, Defense Finance and Accounting Service, and the U.S. Office of Personnel Management, and proposed tax of \$4,746, a late-filing penalty of \$1,186.50, and applicable interest.
 12. Appellant protested the NPA and FTB issued a NOA affirming the NPA.
 13. This timely appeal followed.

DISCUSSION

Issue 1: Whether appellant has shown error in FTB's proposed assessments for the 2018 and 2019 tax years.

California residents are taxed on their entire taxable income (regardless of source). (R&TC, § 17041(a).) R&TC section 17071 incorporates Internal Revenue Code section 61, which defines "gross income" to include "all income from whatever source derived," except as otherwise provided by statute. 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 threshold amounts. For the 2018 tax year, the filing threshold for a single taxpayer over the age of 65 with no dependents was California gross income of \$23,593 or California adjusted gross income of \$20,054. For the 2019 tax year, the filing threshold for a single taxpayer over the age of 65 with no dependents was California gross income of \$24,341 or California adjusted gross income of \$20,693.¹

R&TC section 19087(a) provides that if any taxpayer fails to file a required return, FTB at any time "may make an estimate of the net income, from any available information, and 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.*)

¹ FTB annually recomputes the filing threshold amounts for inflation. (See R&TC, § 18501(d).)

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. (*Appeal of Bindley, supra.*) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid.*) In the absence of credible, competent, and relevant evidence showing error in FTB's determination, the determination must be upheld. (*Ibid.*) A taxpayer's failure to produce evidence that is within the taxpayer's control gives rise to a presumption that such evidence, if provided, would be unfavorable to the taxpayer's case. (*Ibid.*)

Here, FTB received information indicating that appellant received gross income exceeding \$89,000 and \$88,000 for the 2018 and 2019 tax years, respectively. These income amounts exceed the filing thresholds for the 2018 and 2019 tax years. Because appellant, a California resident, did not file tax returns for the 2018 and 2019 tax years, FTB issued NPAs to appellant for these tax years estimating appellant's income based on the information received (i.e., Forms 1099-INT, 1099-MISC and/or 1099-R) from Wells Fargo Bank, Defense Finance and Accounting Service, and the U.S. Office of Personnel Management. FTB's use of this information reported to it by third parties to estimate appellant's taxable income is both reasonable and rational. (*Appeal of Bindley, supra.*) Thus, FTB's initial burden has been met and the burden shifts to appellant to establish error in FTB's proposed assessments for the 2018 and 2019 tax years.

On appeal, appellant contends that the amounts allegedly earned in 2018 and 2019 were actually earned approximately equally in tax years 2015 through 2019. As such, appellant estimates that she earned approximately \$33,846² in each of the 2015 through 2019 tax years and contends that after applying deductions for each year, the tax for each year would only be "a few hundred dollars." However, appellant provides no evidence to substantiate her assertion that the income amounts reflected in FTB's proposed assessments for the 2018 and 2019 tax years were actually earned in different tax years (i.e., approximately equally during the 2015 through 2019 tax years). In fact, this assertion is contradicted by the evidence in the record.

For 2018, Wells Fargo Bank reported paying interest income totaling \$45 to appellant and Defense Finance and Accounting Service, the U.S. Office of Personnel Management, and Wells Fargo Bank each reported that they had paid miscellaneous income and/or pension

² Appellant computes this amount by adding the *taxable* income amounts per the 2018 and 2019 NPAs together and dividing the total by five (the number of tax years between 2015 and 2019). However, the *taxable* income amounts reflected in the 2018 and 2019 NPAs already include the standard deduction for each of these years. Nevertheless, appellant asserts that the resulting income for each year (\$33,846) should be further reduced for "deductions applied each year." Additionally, it is unclear whether appellant is asserting that she would be entitled to itemized deductions or the standard deduction for each of these tax years.

annuity or retirement income of \$68,010, \$18,518, and \$2,925 to appellant during 2018. For 2019, Wells Fargo Bank reported paying interest income totaling \$64 to appellant, and Defense Finance and Accounting Service, the U.S. Office of Personnel Management, and Wells Fargo Bank each reported that they had paid miscellaneous income and/or pension, annuity or retirement income of \$80,923, \$4,560, and \$3,125 to appellant during 2019. Appellant provides no explanation for why these third parties reported paying these amounts to appellant in the 2018 and 2019 tax years, if these amounts were actually paid to appellant in different tax years (i.e., in 2015 through 2019.) Additionally, appellant provides no evidence showing that she received lesser income amounts from these payors in 2018 and/or 2019 (e.g., bank statements, payment stubs or statements from the payor(s), revised Forms 1099-INT, 1099-MISC and/or 1099-R, etc.)

Appellant also has not filed tax returns reporting what she contends to be the correct amount of taxable income for the 2018 and 2019 tax years.³ Appellant contends that she could not find a CPA or enrolled agent to file her returns before the deadline for filing this appeal. However, OTA notes that this matter has now been pending before OTA for more than two and a half years, and appellant still has not filed returns for these tax years with FTB.⁴

FTB's proposed assessments for the 2018 and 2019 tax years estimating appellant's income are presumed correct. Appellant's unsupported assertions regarding when this income was earned and potential additional deduction amounts are insufficient to meet her burden of proof to establish error in FTB's proposed assessments. (See *Appeal of Bindley, supra*.)

Issue 2: Whether appellant has established reasonable cause to abate the late-filing penalty imposed for the 2018 and 2019 tax years.

California imposes a penalty for the failure to file a return on or before the due date, unless it is shown that the failure is due to reasonable cause and not due to willful neglect. (R&TC, § 19131.) When FTB imposes a penalty, the law presumes that the penalty was imposed correctly, and the burden of proof is on the taxpayer to establish otherwise. (*Appeal of Fisher, 2022-OTA-377P.*) To overcome the presumption of correctness attached to the penalty, a taxpayer must provide credible and competent evidence supporting a claim of reasonable

³ Appellant's estimate of her income (\$33,845 per year) still exceeds the filing thresholds for the 2018 (gross income of \$23,593 or adjusted gross income of \$20,054) and 2019 (gross income of \$24,341 or adjusted gross income of \$20,693) tax years.

⁴ OTA received appellant's Request for Appeal on August 1, 2022. On March 10, 2023, OTA notified the parties that the oral hearing had been scheduled for May 17, 2023. Thereafter, OTA granted appellant's request for postponement of that hearing and granted appellant's subsequent additional requests for further postponements of the oral hearing.

cause; otherwise, the penalty cannot be abated. (*Ibid.*) To establish reasonable cause, a taxpayer must show that the failure to file a timely return occurred despite the exercise of ordinary business care and prudence, or that cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Ibid.*)

Appellant's only assertion on appeal is that she is of advanced age and has not felt safe going out since the start of the COVID-19 pandemic. However, appellant's 2018 return was due on April 15, 2019 (see R&TC, § 18566), which is before the onset of the COVID-19 pandemic. Additionally, for the 2019 tax year, FTB postponed the deadline for filing 2019 California tax returns and making certain tax payments until July 15, 2020, due to the COVID-19 pandemic.⁵ Appellant has not provided any evidence that she exercised ordinary business care and prudence in attempting to file her 2018 tax return by the April 15, 2019 due date or 2019 tax return by the July 15, 2020 postponed deadline. While OTA is sympathetic to appellant's concerns regarding COVID-19, appellant has not explained what steps, if any, she has taken to prepare and file her 2018 and 2019 tax returns.⁶ To date, the returns for these tax years remain unfiled. Thus, appellant has failed to establish reasonable cause for the abatement of the late-filing penalty imposed for the 2018 and 2019 tax years.

⁵ See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2020-5-april-15-tax-day-postponed-until-july-15-2020.html>.

⁶ Appellant asserts that she has not felt safe going out since the start of the pandemic; however, appellant does not explain whether she has attempted to contact and engage a tax preparer via phone, email, or fax to prepare her 2018 and 2019 tax returns or whether she has attempted to complete and prepare these returns herself.

HOLDINGS

1. Appellant has not shown error in FTB’s proposed assessments for the 2018 and 2019 tax years.
2. Appellant has not established reasonable cause to abate the late-filing penalty imposed for the 2018 and 2019 tax years.

DISPOSITION

FTB’s actions proposing additional tax for the 2018 and 2019 tax years are affirmed.

DocuSigned by:

 Cheryl L. Akin
 Administrative Law Judge

We concur:

Signed by:

 Suzanne B. Brown
 Administrative Law Judge

Signed by:

 Josh Lambert
 Administrative Law Judge

Date Issued: 6/4/2025