

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
B. OREN) OTA Case No. 241017716
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OPINION

Representing the Parties:

For Appellant: B. Oren
For Respondent: AnaMarija Antic-Jezildzic, Program Specialist

H. BOYD, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, B. Oren (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$4,280, a late-filing penalty of \$1,070, 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 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 determination that he has a filing requirement for the 2021 tax year or in FTB’s proposed assessment of tax.
2. Whether appellant has shown reasonable cause to abate the late-filing penalty.

FACTUAL FINDINGS

1. FTB received information based on third-party reporting that appellant had received income from four sources totaling \$84,625. Based on this, FTB determined that appellant earned sufficient income for the 2021 tax year to prompt a filing requirement.

2. FTB subsequently issued appellant a Request for Tax Return for the 2021 tax year, asking appellant to either file a 2021 California income tax return (return), provide evidence that he already filed it, or explain why he had no filing requirement for that tax year.
3. When appellant did not respond, FTB issued appellant a Notice of Proposed Assessment (NPA) estimating appellant's 2021 income and proposing tax, a late-filing penalty, and applicable interest, for the 2021 tax year.
4. Appellant protested the NPA. FTB issued a Notice of Action (NOA) affirming the NPA.
5. This timely appeal followed.
6. FTB requested additional time to file its brief to give appellant another opportunity to provide documentation or file his 2021 return.
7. As of the date briefing closed, appellant has neither filed a 2021 return nor provided documentation to show that the NPA or NOA are incorrect.

DISCUSSION

Issue 1: Whether appellant has demonstrated error in FTB's determinations that he has a filing requirement for the 2021 tax year or in FTB's proposed assessment of tax.

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 an individual has gross income or adjusted gross income exceeding certain filing thresholds. (R&TC, § 18501(a)(1)-(4).)¹ Gross income means all income from whatever source derived, unless specifically excluded. (Internal Revenue Code, § 61(a); R&TC, § 17071.)

R&TC section 19087(a) provides that if any taxpayer fails to file a return, 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." When FTB makes a proposed assessment of tax based on an estimate of income, FTB's initial burden is to show that its assessment is reasonable and rational. (*Appeal of Bindley*, 2019-OTA-179P (*Bindley*)). An assessment based on unreported income is presumed correct when the taxing agency introduces a minimal factual foundation to support the assessment. (*Ibid.*)

¹ For the 2021 tax year, the filing threshold for a single individual under 65 years of age with no dependents is gross income of more than \$19,310 or California adjusted gross income of more than \$15,448. The filing threshold for a single individual 65 years of age or older with no dependents is gross income of more than \$25,760 or California adjusted gross income of more than \$21,898.

Here, FTB determined that, in total, the income information it received from four third-party sources reported that appellant had gross income in excess of the 2021 filing threshold. On appeal, appellant does not contest that he earned income from these sources. Thus, FTB's use of the third-party information to estimate appellant's income is reasonable and rational.

Once FTB has met its initial burden, the proposed assessment of tax is presumed correct, and the taxpayer has the burden of proving it to be wrong. (*Bindley, supra.*) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Bindley, supra.*) In the absence of credible, competent, and relevant evidence showing error in FTB's determination, the determination must be upheld. (*Ibid.*)

Appellant asserts that he did not make any money in 2021, barely had any money to pay for basic daily living needs, and lost more money in his stock account than he made in income. On appeal, he did not provide any documentation to support his assertions and did not file a 2021 return. In briefing, FTB requested documentation regarding appellant's claims, yet appellant has not produced evidence showing that FTB's proposed assessment is incorrect. Because appellant has not provided evidence showing error in FTB's determination, its proposed assessment of tax must be upheld. (See *Bindley, supra.*)²

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

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 Koepfel*, 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.*)

Here, appellant's 2021 return was due on April 15, 2022. As of the date briefing closed, appellant has not filed a 2021 return. Appellant provides no evidence demonstrating reasonable

² Appellant indicates that payment of the proposed assessment would be a financial hardship. As noted in FTB's brief, appellant may contact FTB to determine whether he is eligible for an installment agreement or offer in compromise program. (See <https://www.ftb.ca.gov/pay/if-you-cant-pay>.)

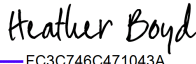
cause; he only asserts that he did not earn sufficient income to pay taxes. Thus, appellant has not demonstrated that the late-filing penalty should be abated for reasonable cause.

HOLDINGS

1. Appellant has not demonstrated error in FTB’s determinations that he has a filing requirement for the 2021 tax year or in FTB’s proposed assessment of tax.
2. Appellant has not shown reasonable cause to abate the late-filing penalty.

DISPOSITION

FTB’s action is sustained.

Signed by:

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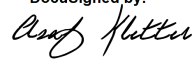
 Heather Boyd
 Administrative Law Judge

We concur:

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 Andrew Wong
 Administrative Law Judge

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 Asaf Kletter
 Administrative Law Judge

Date Issued: 11/18/2025