

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
P. CALDWELL) OTA Case No. 19064950
)
)
)
)

OPINION

Representing the Parties:

For Appellant: P. Caldwell¹

For Respondent: David Muradyan, Attorney

For Office of Tax Appeals: John Yusin, Attorney

E. PARKER, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19045, P. Caldwell (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$1,773, a late filing penalty of \$443.25, and applicable interest for the 2015 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 for the 2015 tax year.
2. Whether appellant has shown reasonable cause to abate the late filing penalty.

FACTUAL FINDINGS

1. Appellant did not timely file a 2015 California resident income tax return.

¹ After appellant filed this appeal, appellant was represented by the Tax Appeals Assistance Program (TAAP) at LMU Loyola law School. However, the TAAP representation ended during the appeal and appellant subsequently filed his own briefs with the Office of Tax Appeals.

2. FTB obtained information indicating that appellant received sufficient wage income from Aetna Life Insurance Company (Aetna) to prompt a filing requirement for the 2015 tax year.
3. FTB issued a Request for Tax Return (Request) that requested appellant file a return, provide evidence that a return was already filed, or explain why appellant did not have a filing requirement for the 2015 tax year.
4. Appellant responded to the Request and explained he received a letter from Aetna in June 2017, stating he received an overpayment. Appellant provided Forms W-2 for the 2017 and 2018 tax years reporting wages from Aetna and a May 2018 earnings statement from Aetna. Appellant stated he needed documentation from Aetna and his former employer to complete his tax filing.
5. FTB issued a Notice of Proposed Assessment (NPA) to appellant explaining that since appellant did not file a return, provide evidence that a return was already filed, or explain why appellant did not have a filing requirement for the 2015 tax year, FTB proposed to estimate appellant's tax liability based on wages reported by Aetna. After applying the standard deduction, FTB proposed an additional tax liability of \$1,773 and a late filing penalty of \$443.25, plus interest.
6. Appellant timely protested the NPA and claimed that his 2015 income should be zero due to a charge back by Aetna. Appellant provided copies of two Aetna earning statements for checks dated November 21, 2017, and July 20, 2018.
7. Appellant then submitted the first and last page of a 2015 California tax return reporting no income, deductions, or tax liability. Appellant attached a letter stating he does not owe taxes for the 2015 tax year because Aetna charged back an overpayment that covered the 2015 tax year.
8. FTB sent a letter explaining that the incomplete return and letter were insufficient to prove that the wages reported by Aetna were incorrect.
9. FTB issued a Notice of Action that affirmed the NPA.
10. This timely appeal followed.

11. On appeal, appellant submits a copy of a United States Tax Court decision (Tax Court Decision) entered and served on July 21, 2022,² and a copy of a 2006 FlexCare Benefits brochure.
12. On appeal, FTB submits: (1) a copy of appellant's 2015 IRS Wage and Income Transcript (IRS Wage Transcript), dated April 18, 2022, which reported the wages received from Aetna; (2) a copy of appellant's returns list indicating appellant did not file a 2017 California income tax return; and (3) a copy of appellant's 2018 California income tax return.

DISCUSSION

Issue 1: Whether appellant has demonstrated error in FTB's proposed assessment for the 2015 tax year.

Gross income is defined as all income from whatever source derived, unless specifically excluded. (Internal Revenue Code (IRC), § 61(a); R&TC, § 17071.) California imposes a tax on the entire taxable income of its residents. (R&TC, § 17041(a).) "Every individual taxable under Part 10 (commencing with Section 17001) shall make a return to the Franchise Tax Board, stating specifically the items of the individual's gross income from all sources and the deductions and credits allowable, if the individual [meets specific filing thresholds]." (R&TC, § 18501(a).)

California conforms to Part III of Subchapter B of Chapter 1 of Subtitle A of the IRC, relating to items that are specifically excluded from gross income, except as otherwise provided. (R&TC, § 17131.) Gross income excludes "amounts received through accident or health insurance (or through an arrangement having the effect of accident or health insurance) for personal injuries or sickness (other than amounts received by an employee, to the extent such amounts (A) are attributable to contributions by the employer which were not includible in the gross income of the employee, or (B) are paid by the employer)[.]" (IRC, § 104(a)(3).) Thus, taxpayers may exclude disability benefits if they paid premiums for the disability plan or if their employer paid premiums and the premiums were includable in their gross income. (*Tuka v. Commissioner* (2003) 120 T.C. 1, 4 [IRC section 104(a)(3) "clearly contemplates that exemption of benefits depends on whether contributions to an accident and health insurance plan involve

² The Tax Court Decision found that appellant had enrolled in two long-term disability plans while employed at Sprint Nextel and received taxable disability payments from both plans in 2011. The tax court rejected appellant's argument that he had no tax liability due to an overpayment recoupment during the 2012 through 2018 tax years. The tax court found that appellant had a tax deficiency for the 2011 tax year, that appellant failed to file a return, and that the late payment penalty was applicable.

after-tax dollars”].) The taxpayer has the burden of proof to show that amounts received from a disability or accident plan are deductible. (*Beisler v. Commissioner* (9th Cir. 1986) 814 F.2d 1304, 1306.)

If a taxpayer fails to file a tax return, FTB “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).) FTB is given “great latitude” in estimating income when a taxpayer fails to file a return or provide the information necessary to ascertain the taxpayer’s tax liability. (*Appeal of Shanahan*, 2024-OTA-039P.)

When FTB makes a proposed assessment of additional tax based on an estimate of income, the 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 the taxing agency introduces a minimal factual foundation to support the assessment. (*Ibid.*) Once this initial burden is met, the proposed assessment of additional tax is presumed correct and the taxpayer has the burden of proving it to be wrong. (*Ibid.*) Unsupported assertions are not sufficient to satisfy a taxpayer’s burden of proof, and a taxpayer’s failure to produce evidence that is within his or her control gives rise to a presumption that such evidence is unfavorable to his or her case. (*Appeal of Shanahan, supra.*)

Here, FTB provides evidence that it based appellant’s estimated income on wages reported by Aetna, as evidenced by appellant’s IRS Wage Transcript dated April 18, 2022. Reliance on such third-party reporting to estimate income is both reasonable and rational. (*Appeal of Shanahan, supra.*) Thus, FTB has met its initial burden and appellant must prove the proposed assessment is incorrect.

On appeal, appellant makes several arguments³ to refute FTB’s proposed assessment based on the estimate of income from the IRS Wage Transcript. Appellant primarily asserts that income reported by Aetna is related to non-taxable disability payments and should be excluded from taxable income. Appellant claims that he enrolled in a long-term disability plan and that he paid for the policy “out of [his] own pocket.”⁴ Appellant argues that the 2006 FlexCare Benefits brochure provided by his representative does not reflect the long-term disability benefit plan he

³ Appellant provides many arguments that reference tax years not at issue in this appeal. To the extent possible, OTA limits its analysis to the arguments relevant to the 2015 tax year.

⁴ Appellant appears to be arguing that he used after-tax dollars to pay the premiums to Aetna.

enrolled in.⁵ Additionally, appellant asserts that he previously provided pay stubs and a copy of his United Healthcare policy and group plan to FTB. However, appellant does not provide these documents on appeal.

Appellant's claim that the disability payments received were non-taxable is not supported by documentation. Appellant provides no evidence to establish the policy was paid for with after-tax dollars. Appellant also does not provide a copy of the long-term disability policy under which the payments were made during 2015. Without such documentation, or comparable information, there is no evidence the income reported by Aetna should have been excluded from taxable income. Appellant has not met his burden of proof to show that amounts received from a disability or accident plan are deductible. (*Beisler v. Commissioner, supra.*) A taxpayer's failure to produce evidence that is within his or her control gives rise to a presumption that such evidence is unfavorable to his or her case. (*Appeal of Shanahan, supra.*) As such, appellant has failed to show the payments received in 2015 were non-taxable benefits.

Appellant next argues that FTB's proposed assessment is incorrect because he did not receive many of the long-term disability payments that Aetna "fraudulently" reported making over several years. Appellant claims that for the 2015 tax year, he only received two payments of \$4,227.50 each, for a total of \$8,455, rather than the \$50,730 reported on the IRS Wage Transcript because, according to appellant, the "remaining ten payments [were] being charged off by Aetna." Appellant provides a copy of a June 16, 2017 letter from Aetna which explained appellant received an overpayment of \$108,317 for the period of February 14, 2010, through April 30, 2017. Appellant also submits his Aetna benefits statements for November 2017, March 2018, May 2018, and July 2018, which show those monthly payments were offset against an overpayment as "PY Recovery" so that zero net pay was distributed to appellant in those months.⁶

Despite Aetna's subsequent recovery of payments in the 2017 and 2018 tax years, income is included in gross income for the tax year in which it is actually or constructively received by the taxpayer unless it is includible for a different year in accordance with the taxpayer's method of accounting. (Treas. Reg. § 1.451-1.) "Income accrues when the right to

⁵ Appellant asserts FTB included the 2006 FlexCare Benefits, despite having access to the United Health Care group plan, "leading to ongoing misdirection and obfuscation of the facts." OTA notes appellant provided the brochure and stated the brochure outlined appellant's disability insurance coverage. Nevertheless, OTA does not rely on the brochure in reaching its determination in this Opinion.

⁶ Appellant also provides Forms W-2 for the 2017 and 2018 tax years that report total wages from Aetna of \$38,970 and \$29,227.50, respectively.

receive it becomes fixed ... even if later events may require the recipient to repay it.” (*Northern Life Ins. Co. v. U.S.* (9th Cir. 1982) 685 F.2d 277, 278.) Absent equitable recoupment, any reductions in benefits that occurred in later years would not offset taxable income for the 2015 tax year.⁷ Appellant’s IRS Wage Transcript establishes he received the disability payments in 2015, and appellant has not proven otherwise. Thus, Aetna’s subsequent efforts in later years to recoup overpayments made to appellant are irrelevant to appellant’s recognition of those payments in the 2015 tax year.

Additionally, R&TC Code section 19314(a)(1) provides a statutory remedy for time-barred overpayments in the form of an offset of the overpayment amount against any deficiency in tax, for the same or any other year, “if the overpayment results from a transfer of items of income or deductions or both to or from another year for the same taxpayer.” An offset will not be allowed after the expiration of seven years from the due date of the return on which the overpayment is determined. (R&TC, § 19314(b).) However, appellant has not established an overpayment exists for any tax year. The record indicates appellant did not file a 2017 California return and he did not report any income received from Aetna on his 2018 return. There can be no offset of tax for which the tax was never paid.

Appellant also argues that he faxed and mailed FTB numerous pages of documents, including pay stubs, and a United Healthcare policy and group plan that show that “Aetna reported false tax information, fraudulent payments, [and] fraudulent checks from 2010 to 2018.” Appellant asserts that he filed multiple complaints with the Department of Labor, California Department of Insurance, and the Kansas Department of Insurance in which he alleged Aetna “fabricated a bogus group plan and was inaccurately reporting wages to both the IRS and FTB.” Appellant contends that FTB also engaged in misconduct by withholding and concealing documents and important information that would show the disability payments were not taxable.

Appellant has not provided evidence to substantiate his allegations. OTA notes that appellant describes a collection of documents he purportedly provided to FTB that would support his position; however, appellant has failed to provide any of those documents to OTA on appeal. As for the only documents appellant provides on appeal, OTA finds the documents fail to support any of appellant’s claims. For example, appellant provides documents that he

⁷ Equitable recoupment is a defense in the nature of a setoff and is available in limited situations. For example, equitable recoupment applies to single transactions that are subject to “different, and inconsistent, theories of taxation.” (*U.S. v. Dalm* (1990) 494 U.S. 596, 1368.) Another example is the doctrine of setoff, which requires appellant to show that FTB has money belonging to appellant (*Lewis v. Reynolds* (1932) 284 US 281, 283), which he has not established. However, appellant does not provide evidence sufficient to determine if equitable recoupment would be applicable.

describes as Aetna's "intercompany communication" which he alleges prove that he received no payments because they show his account was closed in 2010. However, these documents appear to be internal activity logs that track tasks assigned to employees in the processing of claims. These tasks include the initial opening of the claim, phone calls with appellant, submission of documents, review of medical records, etc. Upon completion of these individual internal tasks, the "task status" notes "closed." Contrary to appellant's assertion, these documents do not support his claim that his account was closed.

Appellant's unsupported assertions cannot satisfy his burden of proof. (*Appeal of Shanahan, supra.*) On appeal, appellant did not produce evidence that is within his control, documents he claims to have already provided to FTB, which gives rise to a presumption that such evidence is unfavorable to appellant's case. (*Ibid.*) Therefore, appellant has not met his burden to prove error in FTB's proposed assessment.⁸

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

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(a).) 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. (*Appeal of GEF Operating, Inc., 2020-OTA-057P.*) The burden of proof is on the taxpayer to provide credible and competent evidence supporting a claim of reasonable cause. (*Appeal of Xie, 2018-OTA-076P.*) Ignorance of the law does not establish reasonable cause, and unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of GEF Operating, Inc., supra.*)

Appellant does not dispute that he failed to file a timely return for the 2015 tax year. Rather, appellant argues that the income received in 2015 was non-taxable and, therefore, he does not have a 2015 filing requirement. However, the record establishes that appellant received taxable disability payments in 2015, prompting a filing requirement. Appellant has not provided any arguments or evidence to prove that his failure to timely file his 2015 tax return by the due date was due to reasonable cause. Ignorance of the law does not establish reasonable

⁸ Appellant indicates that payment of the proposed assessment would be a financial hardship. Once the decision in this appeal becomes final, 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. (*Appeal of GEF Operating, Inc., supra.*) Therefore, appellant has not established reasonable cause to abate the late filing penalty.

HOLDINGS

1. Appellant has not demonstrated error in FTB’s proposed assessment for the 2015 tax year.
2. Appellant has not shown reasonable cause to abate the late filing penalty.


DISPOSITION

FTB’s action is sustained.

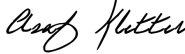
DocuSigned by:

 6651E0AAC34B4F6...

 Erica Parker
 Hearing Officer

We concur:
 DocuSigned by:

 67F043D83EF547C...

 Sheriene Anne Ridenour
 Administrative Law Judge

DocuSigned by:

 D17AEDDCAAB045B...

 Asaf Kletter
 Administrative Law Judge

Date Issued: 7/17/2025