

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
Z. HE) OTA Case No. 250118548
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OPINION

Representing the Parties:

For Appellant: Z. He

For Respondent: Vicki M. Leclerc, Program Specialist

H. FAMULARO, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Z. He (appellant) appeals an action by the Franchise Tax Board (respondent) proposing to assess tax of \$2,341, a late-filing penalty of \$585.25, 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 respondent’s proposed assessment of tax.
2. Whether appellant has established reasonable cause to abate the late-filing penalty.

FACTUAL FINDINGS

1. Appellant’s bank issued to appellant a Form 1098, Mortgage Interest Statement, which reported that appellant paid mortgage interest of \$11,682 in 2021.¹

¹ On appeal, respondent provides an Integrated Non-Filer Compliance Income Summary for appellant’s 2021 tax year that lists third-party reporting information in addition to appellant’s mortgage interest payments, including dividend distributions, interest income, and capital losses for 2021. Because neither party addresses these additional reported income and loss items on appeal, these items will not be addressed further in this Opinion.

2. On March 12, 2024, respondent sent appellant a Request for Tax Return (Request) in which respondent determined that appellant may have a 2021 California income tax return filing requirement based on the reported mortgage interest paid by appellant.² Respondent required appellant to file a 2021 California income tax return or explain why appellant had no filing requirement by April 17, 2024. Appellant did not respond to the Request.
3. On September 13, 2024, respondent issued a Notice of Proposed Assessment (NPA) to appellant comprised of the following: (1) estimated income of \$70,092, based on statistical data supporting a 6:1 ratio of income-to-mortgage-interest paid (here, 6 x \$11,682); (2) itemized deductions for the mortgage interest; and (3) an exemption credit. Based on this computation, respondent proposed to assess tax of \$2,341, a late-filing penalty of \$585.25, and applicable interest for the 2021 tax year.
4. On November 10, 2024, appellant filed a protest in response to the NPA, in which appellant contended that respondent's estimated income is incorrect because: (1) appellant renounced his U.S. permanent resident status on September 21, 2020; (2) appellant has resided in China since that date; and (3) appellant did not earn any California source income in 2021. Appellant attached confirmation from the U.S. Citizenship and Immigration Services of his relinquished U.S. permanent residency.
5. On January 2, 2025, respondent issued a Notice of Action affirming the NPA.
6. This timely appeal followed.
7. On appeal, respondent provides: (1) an online real estate company webpage printout, which lists price history transactions for appellant's residential property, including a rental listing for \$3,795 per month that was removed on August 15, 2018, and a sale listing for \$1,950,000 on August 5, 2022; and (2) a copy of appellant's 2022 California Schedule D-1, Sale of Business Property (2022 Schedule D-1), on which appellant reported that his residential property was held as "rental property" that he acquired on October 12, 2012, and sold on September 12, 2022.
8. As of the date briefing for this appeal closed, appellant had not filed a 2021 California income tax return.

² A California taxpayer who is a single individual under 65 years old with no dependents has a California filing requirement for the 2021 tax year if the individual's California gross income exceeds \$19,310 or the individual's California adjusted gross income exceeds \$15,448.

DISCUSSION

Issue 1: Whether appellant has established error in respondent'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 respondent "stating specifically the items of the individual's gross income from all sources and the deductions and credits allowable," when certain filing thresholds are exceeded. (R&TC, § 18501(a)(1)-(4).) If a taxpayer fails to file a return, then respondent, 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).) Respondent 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 respondent proposes a tax assessment based on an estimate of income, then respondent's initial burden is to show that 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.*)

As of the date briefing for this appeal closed, appellant had not filed a 2021 California income tax return. Respondent's proposed assessment is based on estimated income of \$70,092 in 2021, which exceeded the 2021 California income tax return filing threshold. Respondent determined this amount using statistical data supporting a 6:1 ratio that appellant had \$6 of income for every \$1 in mortgage interest he paid (i.e., $6 \times \$11,682 = \$70,092$). Respondent's estimate of appellant's income based on statistical data and appellant's mortgage interest payments satisfies respondent's initial burden to show that its proposed assessment is reasonable and rational. (See R&TC, § 19087(a); *Appeal of Bindley*, *supra*.)

Because respondent has met its initial burden, appellant has the burden of proving the proposed assessment is incorrect. (*Appeal of Bindley*, *supra*.) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of Mazer*, 2020-OTA-263P.) Proof must be by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(b).) To meet this evidentiary standard, appellant must establish by documentation or other evidence that the circumstances it asserts are more likely than not to be correct. (*Appeal of Belcher*, 2021-OTA-284P.)

Appellant contends respondent's income estimate is incorrect because appellant has resided in China since renouncing his U.S. permanent resident status on September 21, 2020, and did not earn any California source income in 2021. Based on the U.S. Citizenship and

Immigration Services' confirmation that appellant relinquished his U.S. permanent residency on September 21, 2020, respondent concedes that appellant was not a California resident in 2021. Respondent, however, contends that appellant has not satisfied his burden to establish that the estimated income is not California source income. In support of respondent's estimated income determination, on appeal, respondent provides evidence that appellant earned rental income in 2021. This evidence includes an online real estate company webpage printout that shows price history transactions for appellant's residential property of a rental listing for \$3,795 per month that was removed on August 15, 2018, and, as the next transaction, a sale listing for \$1,950,000 on August 5, 2022. Respondent also includes a copy of appellant's 2022 Schedule D-1, on which appellant reported that his residential property was held as "rental property" that he acquired on October 12, 2012, and sold on September 12, 2022.

California residents are taxed on their entire taxable income (regardless of source), while nonresidents, such as appellant, are only taxed on income from California sources. (R&TC, §§ 17041(a), (b), & (i), 17951.) As a California nonresident in 2021, appellant is only liable for California income tax on his California source income. Based on the record, appellant has satisfied his burden of proof that respondent's proposed assessment of tax based on estimated income of \$70,092 in 2021 is incorrect. Instead, OTA finds appellant's estimated income is limited to his California source income, comprised of net rental income of \$33,858 in 2021 (i.e., \$3,795 of monthly rental income x 12 months = \$45,540 of gross rental income - \$11,682 of mortgage interest expenses related to appellant's residential property). Therefore, although appellant has a California nonresident income tax filing requirement for the 2021 tax year, respondent's proposed assessment of tax is modified to reflect that appellant had California source income for that tax year consisting solely of net rental income of \$33,858.

Issue 2: Whether appellant has established 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.) 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 Shanahan, supra.*) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid.*)

Appellant does not address the late-filing penalty. As discussed above, OTA finds appellant had a California nonresident income tax filing requirement for 2021. Therefore,


appellant has not met his burden of showing that the failure to timely file his 2021 tax return was due to reasonable cause and not due to willful neglect.

HOLDINGS

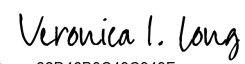
1. Appellant has established partial error in respondent’s proposed assessment of tax, which is modified to reflect that appellant, who has a California nonresident income tax filing requirement for the 2021 tax year, had California source income for that tax year consisting solely of net rental income of \$33,858.
2. Appellant has not established reasonable cause to abate the late-filing penalty.

DISPOSITION


Respondent’s proposed assessment is modified in accordance with the holdings above. In other respects, respondent’s proposed assessment is sustained.

Signed by:

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 Hans Famularo
 Administrative Law Judge

We concur:
 Signed by:

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 Veronica I. Long
 Administrative Law Judge

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 Asaf Kletter
 Administrative Law Judge

Date Issued: 1/7/2026