

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 230513445
P. SHEPARD)
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OPINION

Representing the Parties:

For Appellant: Evan M. Lurie, Tax Appeals Assistance Program

For Respondent: Vivian Ho, Attorney

For Office of Tax Appeals: Michelle Huh, Attorney

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, P. Shepard (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$675, a late filing penalty of \$168.75, and applicable interest for the 2020 tax year.

Office of Tax Appeals (OTA) Panel Members Veronica I. Long, Sara A. Hosey, and Seth Elsom held a virtual oral hearing for this matter on November 19, 2025. At the conclusion of the hearing, the record was closed, and this matter was submitted for an opinion pursuant to California Code of Regulations, title 18, section 30209(b).

ISSUES

1. Whether appellant has established error in FTB’s determination that appellant has a filing requirement for the 2020 tax year and owes tax.
2. Whether appellant has established reasonable cause to abate the late filing penalty.

FACTUAL FINDINGS

1. Appellant is a disabled California resident who receives nontaxable Supplemental Security Income (SSI) and has not been previously required to file a tax return.
2. In July of 2020, appellant joined the Amazon Vine Program (Vine) to receive products in exchange for providing product reviews. Vine participants entered into a Vine Voices

Participation Agreement (Participation Agreement). The terms and conditions of the Participation Agreement state, in relevant part:

“Supply of Products

Products enrolled in the Program (‘Vine Products’) are provided on an ‘as is’ basis – Amazon makes no product warranties to you, and accepts no responsibility for return, repair, refund or replacement.”

“Confidentiality and Restrictions

In consideration of the opportunity to participate in the Program, you agree that you will: ... for six months following your order of any Vine Product, not sell or give possession of that Product to any other person.”

“Disposal of Vine Products

All right, title, and interest in Vine Products will pass to you when the Amazon Product is delivered to the common carrier for delivery to you. You may keep or destroy the Vine Product at your discretion at any time.”

3. Vine program FAQs state, in relevant part:

“How are product values calculated?

The fair market value (FMV) is calculated based on a variety of factors, including information provided by the manufacturer. The current price is only one of the components taken into account when calculating the FMV of an item which may be different from the current price listed on Amazon.com. There are certain categories [where] we have a set FMV. For example, third-party household goods such as grocery, beauty, and pet foods will be generally valued at \$0. Books, including Advanced Reader Copies, will be valued at 99 cents. We cannot make adjustments to this value; please know that if you order this item you will be responsible for paying taxes associated with the FMV shown. Your Account page will display a running total of the FMV for products received through the program; this allows you to track the value of products you have received each year. If you have any concern about the FMV of a Vine item, we suggest that you do not request this item as we cannot adjust this value and it will be reported on your tax documents. Your Account page will display a running total of the fair market value for products received through the program; this allows you to track the value of products you have received each year.”

“Does the total value change if I have to cancel an order because I can’t review it?”

Yes, if you have to cancel a Vine order because you can’t review it due to a defective or damaged item, then we may deduct the value of that item from your Vine account when the cancellation occurs.”

“When is a product calculated towards my title for a tax reporting year?”

For relevant tax authorities’ reporting, Amazon estimates the fair market value of products at the point when you took ownership. Based on the Vine Voice Participation Agreement, title of Vine items transfers to you at the time of the order.”

4. During 2020, appellant received over 900 items from Vine which Vine estimated to have a FMV of \$37,355, and it issued appellant a 1099-NEC¹ reflecting that she received nonemployee compensation in that amount.
5. Appellant did not file a 2020 California personal income tax return.
6. FTB received a copy of the Form 1099-NEC showing that appellant received \$37,355 of income and determined that appellant had a 2020 filing requirement.² FTB issued a Request for Tax Return (Request), asking appellant to file a 2020 California tax return.
7. Appellant responded to the Request, stating that she did not receive income from Vine in the 2020 tax year because, under the terms of the Participation Agreement, the Vine items did not become hers until six months after she received them.
8. On December 11, 2022, FTB issued a letter to inform appellant that she was required to file a California income tax return for the \$37,355 of income or substantiate why she was not required to file. Appellant did not respond to the letter.
9. Subsequently, FTB issued appellant a Notice of Proposed Assessment (NPA), proposing to assess tax of \$675 and a late filing penalty of \$168.75, plus applicable interest, based on the \$37,355 of income.
10. Appellant protested the NPA.
11. FTB issued a Notice of Action, affirming the NPA. This timely appeal followed.
12. On appeal, appellant provides a ledger from Vine. The ledger lists over 900 products ordered by appellant through Vine, the FMV of each product, the date appellant ordered the product, the date title transferred to appellant, and a statement about IRS reporting.

¹ Form 1099-NEC reports nonemployee compensation.

² For the 2020 tax year, the filing threshold for a single individual under 65 years of age with no dependents was California gross income of \$18,496 or California adjusted gross income of \$14,797.

The order date and title transference dates are the same for approximately 90 percent of the items. For the remaining items, the title transfer date is generally a few days late, with the largest difference being a 20-day delay. All title transfer dates occurred within 2020. The statement about IRS reporting provides as follows:

“For IRS reporting, Amazon estimates the FMV of products at the point when you took ownership. Based on the Vine Voices Participation Agreement, title to third-party items transfers to you six months after you review them; title to Amazon-branded items transfers to you at the time of order. For third-party products, this will include a reduction for depreciation during the first six months.”

13. At the November 19, 2025 virtual hearing, appellant testified that:
- She was aware that she would receive a 1099 from Vine.
 - She extensively reviewed the FTB website to evaluate her tax burden.
 - She discovered there was an income “cutoff” and understood that if her income was below that threshold, she had no filing requirement.
 - She maintained her own records using the sales price of items on eBay, and her records put her below the threshold amount. Based on this, appellant determined that she did not have a filing requirement.

DISCUSSION

Issue 1: Whether appellant has established error in FTB’s determination that appellant has a filing requirement for the 2020 tax year and owes tax.

A presumption of correctness attends FTB’s determinations of fact, and taxpayers have the burden of proving such determinations erroneous. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) FTB’s determination that an exclusion from income should be disallowed is presumed correct, and taxpayers must prove their entitlement to the claimed exclusion. (*Ibid.*) Taxpayers must introduce credible evidence to support their assertions, and if they do not support their assertions with such evidence, FTB’s determinations must be upheld. (*Ibid.*)

Internal Revenue Code (IRC) section 61 defines “gross income” to include “all income from whatever source derived,” except as otherwise provided by statute.³ Gross income includes income realized in any form, including money, property, or services. (Treas. Reg. § 1.61-1(a).⁴) Gross income is construed broadly to include all “accessions to wealth, clearly

³ R&TC section 17071 incorporates IRC section 61.

⁴ When applying the IRC, California also applies the underlying Treasury Regulations to the extent they do not conflict with the R&TC or regulations issued by the FTB. (R&TC, § 17024.5(d).)

realized, and over which the taxpayers have complete dominion.” (*Commissioner v. Glenshaw Glass Co.* (1955) 348 U.S. 426, 431.)⁵ If services are paid for in property, the FMV of the property must be included in the gross income of the person who performed such services in the first taxable year in which the rights of the person having the beneficial interest in such property are transferable or are not subject to a substantial risk of forfeiture, whichever is applicable.⁶ (IRC, § 83(a).)

FMV is “the price at which property would change hands in a transaction between a hypothetical willing buyer and a willing seller, neither being under compulsion to buy or sell and both being reasonably informed as to all relevant facts.” (*U.S. v. Cartwright* (1973) 411 U.S. 546, 551.) FMV is a question of fact to be determined from all relevant evidence. (*Appeal of Gelpi*, 2024-OTA-072P, citing *Cave Buttes, LLC v. Commissioner* (2016) 147 T.C. 38, 357.) FMV may be measured by comparing the subject property to similar properties sold in arm’s-length transactions at or around the same time period. (*Chapman Glen Ltd. v. Commissioner* (2013) 140 T.C. 294, 326.) Taxpayers may not “adjust the acknowledged retail price of the goods [...] merely because they decide among themselves that such goods [...] were overpriced.” (*Rooney v. Commissioner* (1987) 88 T.C. 523, 528.)

Appellant participated in Vine and received a Form 1099-NEC of \$37,355 for the 2020 tax year. Because appellant did not file a tax return for the 2020 tax year, FTB assessed additional tax of \$675 and a late filing penalty of \$168.75, plus interest, based on the amount reported on Form 1099-NEC. Thus, FTB’s determination is presumed correct, and appellant must show through credible evidence that FTB’s determination was erroneous.

Appellant’s Position

Appellant contends that: (1) the items should not be included in her income in the 2020 tax year because title was not transferred to her until six months after the items were received, and further, that their FMV should be determined based on their condition at that date; (2) alternatively, if the items are includable in income in the 2020 tax year, their FMV was less than the amount of the filing threshold because the FMV was overstated by Vine.

⁵ Where federal and California law are the same, rulings and regulations dealing with the IRC are persuasive authority in interpreting the California statute. (See *J.H. McKnight Ranch, Inc. v. Franchise Tax Bd.* (2003) 110 Cal.App. 4th 978, fn. 1.)

⁶ R&TC section 24379 incorporates IRC section 83.

Inclusion in Income

Appellant contends that the Vine items should not be included in her income in the 2020 tax year on the basis that she did not begin the Vine program until July 2020, and she did not take title to the items until six months after their delivery. Appellant cites the Participation Agreement as support for the contention that she did not actually own the household or personal items until six months after their delivery. Appellant asserts that participants of Vine are prohibited from transferring ownership of the reviewed products for six months after receiving them, which suggests that Vine maintains ownership of the products during this period rather than the participants. She asserts she merely stored and looked after the items with permission to personally use them as she saw fit. Appellant also contends that the Vine ledger supports her position, because the vast majority of the items she ordered were third-party items.

As to appellant's contention that Vine products are not includable in her income until six months after they were received by her, OTA finds this argument unpersuasive. The Vine ledger provided by appellant states an "Order Date" and a "Title Transfer Date" for each item ordered by appellant through Vine. All of the over 900 items ordered by appellant through Vine show an order date and title transfer date within the 2020 calendar year; in approximately 90 percent of cases, title is shown as transferring on the same date appellant placed the order. While the Vine ledger states that title to Amazon-branded items transfer to appellant at the time of the order, the ledger also reflects that title transferred during 2020. Further, the Participation Agreement and Vine FAQs state that title in the items transferred to the recipient upon delivery.

To the extent that appellant asserts that she did not obtain title to Vine products until she was able to transfer ownership of them, the facts and circumstances reflect that the Vine products were not subject to a substantial risk of forfeiture when they were received by appellant. Appellant enjoyed the beneficial interest of the reviewed products without any substantial risk of forfeiture. (See IRC, § 83(a).)⁷ Thus, appellant obtained title to the Vine products at the time she received them.

⁷ Appellant contends that the statutory intent of IRC section 83(a) is that title of personal property transfers only when the property becomes transferrable. However, the plain statutory language does not support this interpretation, and statutory interpretation will only be used when the statute itself is ambiguous. (See *Appeal of Dandridge*, 2019-OTA-458P; *Microsoft Corp. v. Franchise Tax Bd.* (2006) 39 Cal.4th 750, 758 [statute's plain language governs unless text is ambiguous].)

Valuation

Appellant next contends that the FMV of the Vine items were inflated, and the actual FMV was below the income threshold to require her to file a tax return. Specifically, appellant contends that the FMV provided by Vine was inflated because: the same products were less expensive on comparable websites; the Vine FMV did not take into account if the product was functional or defective; and the Vine FMV did not account for the lack of warranties and inability to return products that would otherwise be available to buyers.

Appellant provides a list of the 100 most expensive items received by her through the Vine program in 2020 with the Vine FMV and her estimated value for the item. Appellant's estimated values were based on used comparable items for sale on other websites, primarily eBay.com. Appellant's estimated value resulted in a 71 percent discount from Vine's FMV. Appellant also provides Amazon listings for items she ordered through Vine, which reflect lower prices. In contrast, FTB provided a list of comparable sales prices for the three most expensive items received by appellant and found that Vine's FMV was the same or similar.

Here, appellant's estimated value list, which primarily uses eBay for comparables, is unpersuasive because they are used products, in contrast to the Vine products which were new. As to the list of Amazon listings provided by appellant, the list appears to be for illustrative purposes only because it refers primarily to items received in tax years other than 2020 and relies primarily on valuation dates outside of the year at issue. Based on this, appellant's list of comparable values and Amazon listings are unpersuasive.

Next, appellant asserts that the Vine FMV did not take into account whether the product was functional or defective. However, the Vine FAQs provided that in the event an item was defective or damaged, Vine would deduct the item from the participant's account.

Finally, appellant contends that the Vine FMV did not account for the lack of warranties and inability to return products that would be available to other buyers. Appellant asserts that the products lacked implied warranties of fitness and merchantability.⁸ Appellant reference the diminished sales price of wedding dresses (50 percent), unwrapped video games (30 percent) and diamond rings (30-50 percent) based on their used status, although the condition of these items themselves is largely unchanged. Appellant also contends that although damaged items could be returned within one day, regular Amazon customers have 30 days for returns. Appellant asserts the ability to return an item accounts for 20-30 percent of its value based on

⁸ By providing the products "as is," appellants contend that the Vine products lacked implied warranties under the California Commercial Code sections 2314-15.

an economic study. Appellant contends the Vine FMV should be reduced to account for these facts.

FTB contends that appellant has not established that the FMV should include the cost of warranties and further asserts that the value of warranties is minimal. FTB also notes that appellant does not assert that any of the Vine products were defective.

While appellant's argument is not without merit, OTA finds that appellant has not met her burden of proof. Appellant has the burden of establishing error in FTB's assessment, and thus, Vine's estimated FMV, by a preponderance of the evidence. (Cal. Code Reg., tit. 18, § 30219(b).) A product with implied warranties and returnability would likely have a greater FMV than the same product without those items. However, appellant has not established that the Vine FMV failed to account for the lack of warranties and returnability, and if not, what an appropriate amount of discount would be. The only list of comparable products provided by appellant is unpersuasive because it lists only used items, primarily from eBay. The list cannot be used as basis for discounting the Vine items that appellant received because appellant received new items, which would be cancelled if defective or destroyed, and not used items. OTA also does not find the Vine products sufficiently similar to, for example, a used wedding dress or diamond ring, to accept appellant's suggested discount amounts for these items. The single economic study cited by appellant is also insufficient to meet appellant's burden of proof by a preponderance of the evidence.

Further, Vine informed its participants about how the FMV of each product was calculated. The Vine FAQs state that: the FMV of each product was calculated based on a variety of factors including information provided by the manufacturer; the current price is only one of the components taken into account when calculating the FMV of an item which may be different from the current price listed on Amazon.com; and that if a participant orders an item they will be responsible for paying taxes associated with the FMV shown by Vine. The FAQs notified participants that their account would display a running total of the FMV for the products received through the program, which allows participants to track the value of the products they received each year. Appellant could have rejected a product for review or selected a product with a lower fair market value to decrease her running total of the FMV of the products that she received each year, but she chose not to do so.

Thus, appellant had reportable income in the form of the products that she reviewed and had a filing requirement for the 2020 tax year.

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

California imposes a penalty for failing to file a return on or before the due date, unless taxpayers show that the failure is due to reasonable cause and not due to willful neglect. (R&TC, § 19131(a).) When FTB imposes a penalty, it is presumed to have been imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) Taxpayers may rebut this presumption by providing credible and competent evidence supporting abatement of the penalty for reasonable cause. (*Ibid.*) Reasonable cause for late filing is shown when the evidence establishes that an ordinarily intelligent and prudent businessperson would have acted similarly under the same circumstances. (*Appeal of Head and Feliciano*, *supra.*)

Appellant requests that the late filing penalty be abated due to reasonable cause. Appellant testified that she researched California's filing requirements on FTB's website and determined that her income was below the filing threshold, and based on this, she believed she was not required to file a 2020 tax return. Appellant asserts that the most important factor in determining reasonable cause and good faith is the extent of her efforts to assess her tax liability.


It is undisputed that appellant honestly believed that she had no filing requirement for the 2020 tax year. However, this honest belief, alone, is not sufficient to establish reasonable cause. As noted above, to establish reasonable cause, the 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 Head and Feliciano*, *supra.*) An ordinarily careful and prudent reading of the Participation Agreement, appellant's Vine ledger which displayed the FMV of each item ordered, and the 1099-NEC issued to appellant, should have alerted appellant that her income was above the filing threshold. Accordingly, appellant has not established reasonable cause to abate the late filing penalty.

HOLDINGS

1. Appellant has not established error in FTB’s determination that appellant has a filing requirement for the 2020 tax year and owes tax.
2. Appellant has not established reasonable cause to abate the late filing penalty.


DISPOSITION

FTB’s action is sustained.


Signed by:

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 Veronica I. Long
 Administrative Law Judge

We concur:

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 Sara A. Hosey
 Administrative Law Judge

Signed by:

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 Seth Elsom
 Hearing Officer

Date Issued: 2/20/2026