OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **G. GABA**	OTA Case No. 241218201

OPINION

Representing the Parties:

For Appellant: G. Gaba

For Respondent: Jeffrey Gates, Attorney

S. RIDENOUR, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, G. Gaba (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of $4,443, a late filing penalty of $1,110.75, 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 FTB's proposed assessment of tax.
2. Whether appellant has shown reasonable cause for failing to timely file his 2021 tax return.

FACTUAL FINDINGS

1. Appellant has not filed a 2021 California income tax return.
2. For the 2021 tax year, a single individual, such as appellant, who was under age 65, had no dependents, and realized more than $19,310 of California gross income or more than $15,448 of California adjusted gross income was required to file a California income tax return.
3. Through its Integrated Non-Filer Compliance Program, FTB obtained computer information indicating that appellant received income sufficient to trigger a 2021 filing

requirement. Specifically, FTB received information reported on federal Forms 1099-B, Proceeds From Broker and Barter Exchange Transactions, from Robinhood Markets, Inc. (Robinhood) indicating that in 2021 appellant received $86,179 in proceeds[1] from stock and cryptocurrency sales.

4. FTB issued a Request for Tax Return requesting that appellant file a return or explain why no return was required. In response, appellant stated that he did not have a filing requirement because he had a total gross income of $0 for 2021. Appellant indicated that he supported himself in 2021 by staying home during COVID-19 and "get[ting] free food," and that he did not file a 2021 tax return because he did not have any income, as he stayed home and took care of his ill parents.

5. FTB reviewed appellant's response and determined appellant had a filing requirement. Therefore, FTB issued appellant a Determination of Filing Requirement – Request, informing appellant that he had 30 days from the date of the notice to file a tax return. Appellant did not file a tax return by the deadline.

6. On August 23, 2024, FTB issued appellant a Notice of Proposed Assessment (NPA). The NPA estimated total income based on the proceeds from Robinhood and, after allowing a standard deduction and personal exemption credit, proposed tax of $4,443 and a late filing penalty of $1,110.75, plus interest.

7. Appellant filed a protest with FTB, asserting that he did not have a job in 2021 and that he was taking care of his ill father who died in September 2023 and his ill mother who died in June 2024. Regarding the Robinhood proceeds, appellant questioned where FTB got the $86,179 in stock proceeds and contended that he "didn't even get to touch or see any of those on [his] hands."[2] Appellant indicated he was unable to afford the amount that FTB proposed to assess.

8. After a review of appellant's protest, FTB issued a Notice of Action affirming the NPA.

9. This timely appeal followed.

---

[1] OTA notes that while appellant's 2021 federal Wage and Income Transcript provides appellant's "Cost or Basis" in an applicable stock, the transcript does not provide such information for the cryptocurrencies. Therefore, FTB's estimate of appellant's income includes appellant's net gain from the stock sales and appellant's proceeds from the cryptocurrency sales.

[2] On appeal, appellant does not repeat the arguments regarding the Robinhood proceeds.

DISCUSSION

Issue 1: Whether appellant has established error in FTB's proposed assessment of tax.

R&TC section 17041(a) provides, in pertinent part, that tax shall be imposed upon the entire taxable income of every resident of California.[3] R&TC section 17071 incorporates Internal Revenue Code (IRC) section 61, which defines "gross income" as including "all income from whatever source derived," including gains derived from dealings in property. R&TC section 18501 requires every individual subject to the Personal Income Tax 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 a taxpayer fails to file a return, FTB may make an estimate of the taxpayer's net income, from any available information, and may propose to assess the amount of tax, interest, and penalties due. (R&TC, § 19087(a).)

When FTB makes a tax assessment based on an estimate of income, FTB's initial burden is to show why its assessment is reasonable and rational. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509, 514.) Federal courts have held that the taxing agency need only introduce some evidence linking the taxpayer with the unreported income before the presumption of correctness is established. (See *Rapp v. Commissioner* (9th Cir. 1985) 774 F.2d 932, 935.) Once FTB has met its initial burden, the assessment is presumed correct and the taxpayer has the burden of proving it to be erroneous. (*Todd v. McColgan*, *supra*, at p. 514.) A taxpayer is not in a good position to criticize FTB's estimate of the taxpayer's liability when the taxpayer fails to file a required return and, in addition, subsequently refuses to submit information upon request. (*Appeal of Shanahan*, 2024-OTA-039P.)

Here, FTB obtained information indicating that in 2021, appellant received $86,179 from sales of Robinhood stock and cryptocurrency. Based on this income, appellant was required to file a tax return for the 2021 tax year. FTB's estimation of appellant's income based upon federal Forms 1099-B information showing that appellant received income totaling $86,179 is both reasonable and rational. (See *Todd v. McColgan*, *supra*, 89 Cal.App.2d at p. 514; *Rapp v. Commissioner*, *supra*, 774 F.2d at p. 935.) Appellant does not deny receiving the $86,179 from Robinhood. Rather, on appeal, appellant contends that he did not work in 2021, he took care of his ailing parents, he began working in September 2024, and that he is struggling financially. As discussed above, "gross income" includes "all income from whatever source derived," including gains derived from dealings in property. (R&TC, § 17071; IRC, § 61.)

[3] Appellant does not dispute that he was a resident of California during 2021.

Appellant has provided no documentation establishing that the $86,179 from Robinhood is not taxable. For example, appellant has not shown that he had a cost basis in the stock that was higher than what was reported on Forms 1099-B or that he had any cost basis in the cryptocurrency that was sold since only the proceeds from those transactions were reported on Forms 1099-B. Furthermore, appellant has not filed a California income tax return for the 2021 tax year and has failed to provide corroborating evidence establishing his income for the 2021 tax year. As such, OTA finds that appellant has not shown error in FTB's proposed assessment of tax.

Regarding appellant's claim of financial difficulty, the question of ability to pay versus determining the correct amount of tax liability are two separate and distinct concepts. OTA lacks authority to make discretionary adjustments to the amount of a tax assessment based on a taxpayer's ability to pay. (*Appeal of Robinson*, 2018-OTA-059P.) Instead, OTA's function in the appeals process is to determine the correct amount of the taxpayer's California income tax liability.[4] (*Ibid*.)

<u>Issue 2: Whether appellant has shown reasonable cause for failing to timely file his 2021 tax return.</u>

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 GEF Operating, Inc.*, 2020-OTA-057P.) Ignorance of a filing requirement does not excuse a taxpayer's failure to file a tax return in a timely manner. (*Ibid*.)

Appellant does not specifically address the late filing penalty issue and offers no evidence of reasonable cause to abate the penalty. As discussed above, appellant did not establish that he had no filing requirement for the 2021 tax year. Therefore, appellant has not met his burden of showing that his failure to file was due to reasonable cause and not due to willful neglect.

---

[4] FTB has its own offer in compromise program, which considers a taxpayer's ability to pay; however, OTA has no jurisdiction over this program. (See https://www.ftb.ca.gov/forms/misc/4045.html)

HOLDINGS

1. Appellant has not established error in FTB's proposed assessment of tax.
2. Appellant has not shown reasonable cause for failing to timely file his 2021 tax return.

DISPOSITION

FTB's action is sustained.

DocuSigned by:
Sheriene Anne Ridenour
67F043D83EF547C...

Sheriene Anne Ridenour
Administrative Law Judge

We concur:

Signed by:
Veronica I. Long
32D46B0C49C949F...

Veronica I. Long
Administrative Law Judge

DocuSigned by:
Sara A Hosey
6D3FE4A0CA514E7...

Sara A. Hosey
Administrative Law Judge

Date Issued: 4/8/2026