OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:

T. RODMAN

OTA Case No. 250218712

OPINION

Representing the Parties:

For Appellant: T. Rodman

For Respondent: Tristen Thalhuber, Attorney

E. PARKER, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19045, T. Rodman (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of $2,365, a late filing penalty of $591.25, 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]

1. Whether appellant has established error in FTB's proposed assessment.
2. Whether appellant has established a basis to abate the late filing penalty.

FACTUAL FINDINGS

1. Appellant did not file a 2021 California tax return.
2. On June 4, 2024, FTB issued a Request for Tax Return (Request) for the 2021 tax year, stating that FTB's records show appellant received income from two third parties and that appellant may have a filing requirement.
3. Appellant responded to the Request, contending he did not have a filing requirement because his income was zero. Appellant argued the income reported by third parties

[1] On appeal, appellant does not provide specific arguments with respect to the imposition of interest; therefore, this Opinion will not address the statutorily imposed interest.

was nontaxable because it was related to stock and a bank account that appellant inherited.

4. FTB requested additional information and appellant provided a copy of D. Rodman's Last Will and Testament, an AT&T Dividend Statement dated July 9, 2021, and a 2021 Form 1099-R Distributions from Pensions, Annuities, Retire or Profit-Sharing Plans, IRAs, Insurance Contracts, etc. (Form 1099-R) issued to appellant as D. Rodman's beneficiary.
5. On October 11, 2024, FTB issued a Notice of Proposed Assessment (NPA) for the 2021 tax year that estimated appellant's income based on taxable income reported on Form 1099-R and Form 1099-DIV, Dividends and Distribution (Form 1099-DIV), by third parties, which FTB previously identified in the Request. The NPA proposed to assess tax, a late filing penalty, and applicable interest.
6. Appellant timely protested the NPA, contending that since he was over the age of 59 1/2 when he accepted the inheritance, the payout was not part of his taxable income.
7. Based on the information provided, FTB determined appellant still had a filing requirement for the 2021 tax year. FTB issued a Notice of Action affirming the NPA.
8. Appellant filed this timely appeal.
9. On appeal, FTB submits a copy of appellant's 2021 IRS Wage and Income Transcript (IRS Transcript), dated March 11, 2025, which reported the Form 1099-R and Form 1099-DIV taxable income that FTB used to estimate appellant's income in the NPA.

DISCUSSION

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

R&TC section 17041(a) provides that tax shall be imposed upon the entire taxable income of every resident of California. R&TC section 17071 incorporates Internal Revenue Code (IRC) section 61, which defines "gross income" as "all income from whatever source derived," including pensions and income in respect of a decedent. IRC section 691(a) provides that an inherited Individual Retirement Account (IRA) is considered inherited income, not inherited property.[2] A distribution to the beneficiary of a decedent's retirement plan or IRA is includable in gross income of the beneficiary, and the portion of a lump-sum distribution to a beneficiary from an inherited IRA that exceeds any nondeductible contributions by the decedent

[2] This statute is incorporated into California law by R&TC section 17731.

is income in the hands of the beneficiary. (IRC, §§ 402(a), 408(d); R&TC, § 17501(b); see *Estate of Kahn v. Commissioner*, T.C. Memo. 2005-125.)

R&TC section 18501 requires every individual subject to 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 the individual's gross income exceeds certain filing thresholds. (R&TC, § 18501(a)(1)-(4).) R&TC section 19087(a) provides that if any taxpayer fails to file a 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."

When FTB makes a proposed assessment of additional tax based on an estimate of income, 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 FTB introduces a minimal factual foundation to support the assessment. (*Ibid*.) Once FTB has met its initial burden, the proposed assessment of additional tax is presumed correct and the taxpayer has the burden of proving it to be wrong. (*Ibid*.) In the absence of credible, competent, and relevant evidence showing error in FTB's determination, the determination must be upheld. (*Ibid*.)

Here, it is undisputed that appellant has not filed a 2021 return. FTB provides appellant's 2021 IRS Transcript, which shows that appellant received taxable dividends and taxable distributions, as reported by third parties (i.e., Form 1099-R and Form 1099-DIV), which FTB used to estimate appellant's income. As such, FTB's proposed assessment is reasonable and rational. (*Appeal of Bindley*, *supra*.) Therefore, the burden shifts to appellant who must demonstrate error in the proposed assessment.

On appeal, appellant contends that the income reported on his IRS Transcript is a nontaxable distribution he received from an inherited IRA. Appellant argues the distribution is nontaxable because it was made after appellant reached the age of 59 1/2. Appellant cites to IRC section 72(t) in support of his position. Appellant does not assert or provide any evidence that the inherited IRA included nondeductible contributions by the decedent.

Appellant's reliance on IRC section 72(t) is misplaced. IRC section 72(t) imposes an *additional tax* on premature distributions from an IRA, which FTB does not propose to assess in this case.[3] As explained above, distributions from an IRA to a beneficiary of a decedent are included in the gross income of the beneficiary. Appellant has not provided evidence that any

[3] R&TC section 17085(c)(1) adopts and modifies IRC section 72(t)(1), such that premature distributions are assessed an additional 2.5 percent tax for California purposes.

portion of the reported distribution from the IRA is nontaxable. (See *Estate of Kahn v. Commissioner*, *supra*.) Additionally, appellant has failed to establish that the dividend income received from the purported inherited stock is nontaxable. As such, appellant has not shown error in FTB's proposed assessment.

Issue 2: Whether appellant has established a basis to abate the late filing penalty.

R&TC section 19131 provides that a late filing penalty shall be imposed when a taxpayer fails to file a tax return on or before its due date, unless it is shown that the failure is due to reasonable cause and not due to willful neglect. 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*, 2024-OTA-039P.)

Here, the record indicates that, as of the date briefing closed, appellant has not filed a 2021 return. As discussed above, appellant has not established error in FTB's determination that appellant was required to file a tax return to report taxable distributions and dividend income. Appellant's sole argument on appeal is that he believed the income was nontaxable purportedly based upon the advice of appellant's tax return preparer. However, even if a taxpayer is unaware of a filing requirement, ignorance of the law is not an excuse for failing to file a timely return. (*Appeal of Cremel and Koeppel*, 2021-OTA-222P.) Additionally, good faith reliance on professional advice may, in certain circumstances, provide a basis for a reasonable cause defense. (*Ibid*.) However, appellant has not provided any evidence or argument to establish that he relied on a tax professional in deciding not to file a timely return in California for 2021 or that such tax professional's advice was based on full disclosure of the relevant facts. (*Ibid*.) The record contains no facts or evidence that warrant a finding of reasonable cause. Thus, OTA has no basis to abate the late filing penalty.

HOLDINGS

1. Appellant has not established error in FTB's proposed assessment.
2. Appellant has not established a basis to abate the late filing penalty.

DISPOSITION

FTB's action is sustained.

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Erica Parker
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Erica Parker
Hearing Officer

We concur:

Signed by:
L. Katrine Shelton
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L. Katrine Shelton
Administrative Law Judge

Signed by:
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Hans Famularo
Administrative Law Judge

Date Issued: 4/6/2026