2026-OTA-361
Nonprecedential

OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:

S. VELAZQUEZ

OTA Case No. 250118602

OPINION

Representing the Parties:

For Appellant: S. Velazquez

For Respondent: Jeffrey Gates, Attorney

H. FAMULARO, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, S. Velazquez (appellant) appeals an action by the Franchise Tax Board (respondent) proposing tax of $3,867, a late-filing penalty of $966.75, and applicable interest for the 2021 tax year.[1]

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 did not timely file a California income tax return for the 2021 tax year.

[1] Because appellant does not specifically contest interest, it is not addressed in this Opinion.

2. Various third-party payors filed information returns that reported appellant received wages totaling $98,124 and taxable retirement distributions totaling $31,078 in the 2021 tax year.[2]
3. Respondent sent appellant a Determination of Filing Requirement – Request, in which respondent determined that appellant was required to file a 2021 return and instructed appellant to file his 2021 return within 30 days of the date of the notice.[3] Appellant did not respond to this letter.
4. On October 11, 2024, respondent issued a Notice of Proposed Assessment (NPA) to appellant that proposed to assess tax of $3,867, a late-filing penalty of $966.75, and applicable interest for the 2021 tax year.
5. Appellant filed a Quick Resolution Worksheet in response to the NPA, on which he selected the option that he did not want to protest the proposed assessment and that he enclosed, or would file, his 2021 tax return. However, appellant did not enclose his 2021 tax return. Instead, appellant enclosed 2021 California tax return filing instructions on which he listed his Adjusted Gross Income (AGI) of $98,125 and California tax owed of $1,596 for the 2021 tax year. Respondent treated appellant's response as a protest of the NPA.
6. On January 21, 2025, respondent issued appellant a Notice of Action affirming the NPA.
7. Appellant then filed this timely appeal with an enclosed Form W-2, Wage and Tax Statement (Form W-2), issued to him that reflected wages of $2,366 for the 2021 tax year.
8. As of the date briefing for this appeal closed, appellant had not filed a 2021 return.

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

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[2] On appeal, respondent provides a Wage and Income Transcript for appellant's 2021 tax year. This transcript reflects that various third-party payors filed information returns that reported appellant received the unreported wage income and taxable retirement distributions at issue in this case. Minor discrepancies appear to be due to rounding.

[3] A California resident who is a single individual under 65 years old with no dependents, such as appellant, 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.

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 Bindle*y, 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*.) R&TC section 21024(a) provides respondent shall have the "burden of producing reasonable and probative information, in addition to the information described [on the prescribed third-party information returns]" where a taxpayer asserts a reasonable dispute with respect to specified items of income reported on an information return filed by a third party. The taxpayer asserting the dispute must also fully cooperate with respondent, and provide access to and inspection of all witnesses, information, and documents within the control of the taxpayer as reasonably requested by respondent. (R&TC, § 21024(b).)

Respondent obtained information that appellant received wages totaling $98,124 and taxable retirement distributions totaling $31,078 from various sources, as reported on third-party information returns in 2021. Respondent thus properly estimated that appellant's income exceeded the 2021 filing threshold. Moreover, appellant has not asserted a reasonable dispute with respect to the unreported wage income or taxable retirement distributions at issue in this case. (See R&TC, § 21024(b); *Andrews v. Commissioner*, T.C. Memo. 1998-316, fn. 8.) In addition, appellant has offered no evidence that he fully cooperated with respondent. (See R&TC, § 21024(b).) Accordingly, respondent has met its initial burden that the proposed assessment based on estimated income as reported by third-party payors on information returns is reasonable and rational, and appellant has the burden of proving the proposed assessment is incorrect. (*Appeal of Bindley*, *supra*.)

Appellant asserts that his employer terminated him in April 2021, and that he earned no income from June 2021 until he was hired by his current employer in December 2021. However, appellant does not deny that he received the estimated income as determined in respondent's NPA. In addition, appellant attached to his appeal his 2021 Form W-2 reflecting wages of $2,366 and listed his AGI of $98,125 on his 2021 California tax filing return instructions, which almost matches respondent's estimated wages for appellant totaling

$98,124[4] for the 2021 tax year. Accordingly, appellant has not provided any evidence establishing that respondent's proposed assessment is incorrect. Thus, appellant has not met his burden to demonstrate error in respondent's proposed assessment of tax.

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

HOLDINGS

1. Appellant has not established error in respondent's proposed assessment of tax.
2. Appellant has not established reasonable cause to abate the late-filing penalty.

DISPOSITION

Respondent's action is sustained.

Signed by:
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Hans Famularo
Administrative Law Judge

We concur:

Signed by:
Suzanne B. Brown
47F45ABE89E34D0...

Suzanne B. Brown
Administrative Law Judge

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

Veronica I. Long
Administrative Law Judge

Date Issued: 5/13/2026

[4] The $1 discrepancy appears to be due to rounding.