

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:	)	OTA Case No. 241117917
K. HUBER	)	
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OPINION

Representing the Parties:

For Appellant:	K. Huber
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For Respondent:	David C. Cortez, Analyst
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H. FAMULARO, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, K. Huber (appellant) appeals an action by the Franchise Tax Board (respondent) proposing tax of \$4,871, a late-filing penalty of \$1,217.75, 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.

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

FACTUAL FINDINGS

1. Various third-party payors filed information returns that reported appellant received income during the 2021 tax year, including dividend income of \$28 and taxable retirement distributions totaling \$90,737.²
2. On May 28, 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.³ Respondent required appellant to file a 2021 California income tax return or explain why appellant had no filing requirement by July 3, 2024. Appellant did not respond to the Request.
3. On August 2, 2024, respondent issued a Notice of Proposed Assessment (NPA) to appellant that, based on the third-party payor information, determined appellant had received estimated income of \$90,765 in 2021. In the NPA, respondent proposed appellant was liable for tax of \$4,871, a late-filing penalty of \$1,217.75, and applicable interest for the 2021 tax year.
4. Appellant filed a protest in response to the NPA. In the protest, appellant contended his income in 2021 was “near zero” because he was unemployed during that year, and his income was below the tax return filing threshold for 2021.
5. On October 10, 2024, respondent issued appellant a Notice of Action (NOA) affirming the NPA.
6. Appellant then filed this timely appeal, in which appellant states he disagrees with respondent’s proposed assessment of tax as provided in the NOA for the same reasons he asserted in his protest.
7. As of the date briefing for this appeal closed, appellant had not filed a 2021 California income tax return.

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 dividend income and taxable retirement distributions at issue in this case. The transcript also reflects information returns that reported appellant received capital gains and interest income. Because neither party addresses the capital gains and interest income on appeal, they will not be addressed further in this Opinion.

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.

DISCUSSIONIssue 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.*) 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).)

Appellant asserts that he received "near zero" income in 2021 because he was unemployed during that year. Accordingly, appellant appears to deny that he received the estimated income as determined in respondent's NPA. However, appellant did not file a tax return or other sworn statement that he did not receive the estimated income or state any facts that tend to indicate that he did not receive the reported dividend income or taxable retirement distributions in that year. The only fact appellant asserts to support he did not receive the estimated income is that he was unemployed in 2021. Appellant's assertion that he received neither wages nor nonemployee compensation has no bearing on his receipt of taxable retirement distributions in 2021. In addition, appellant's statement that he received "near zero" income is consistent with his receipt of the unreported dividend income of \$28 in 2021. Therefore, appellant has not asserted a reasonable dispute with respect to the unreported

dividend 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 [concluding that for purposes of IRC section 6201(d), which is substantially comparable to R&TC section 21024, the taxpayer did not assert a reasonable dispute regarding an income item on an information return where the taxpayer never filed a tax return (or document under oath) denying receipt of the unreported income, failed to state facts tending to indicate that the taxpayer did not receive the unreported income, and failed to deny receipt of the income item].) Furthermore, appellant has offered no evidence that he fully cooperated with respondent. (See R&TC, § 21024(b).) Accordingly, respondent does not bear the heightened “burden of producing reasonable and probative information, in addition to the information described [on the prescribed third-party information returns],” pursuant to R&TC section 21024(a) in this case.

Respondent obtained information that appellant received dividend income of \$28 and taxable retirement distributions totaling \$90,737 from various sources, as reported on third-party information returns in 2021. Respondent properly estimated that appellant’s income exceeded the 2021 filing threshold. Respondent has met its initial burden that its proposed assessment based on estimated income as reported by third-party payors on information returns is reasonable and rational. (*Appeal of Bindley, supra.*) Therefore, appellant has the burden of proving the proposed assessment is incorrect. (*Ibid.*) 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 argues that he has no tax liability for the 2021 tax year. As stated above, appellant offers no evidence to support this contention. 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 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:

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Sheriene Anne Ridenour
Administrative Law Judge

DocuSigned by:


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Erica Parker
Hearing Officer

Date Issued: 3/11/2026