

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 250822983
P. CHAO)
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OPINION

Representing the Parties:

For Appellant: P. Chao

For Respondent: Leoangelo C. Cristobal, Attorney

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, P. Chao (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$137,571, a late-filing penalty of \$34,392.75, and applicable interest for the 2022 taxable 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).

ISSUE¹

Has appellant established error in FTB's proposed assessment?

FACTUAL FINDINGS

1. Appellant did not file a 2022 California tax return.
2. FTB received information that appellant received dividends, interest, and proceeds from the sales of stocks, bonds, or commodities. Specifically, third parties reported to the IRS: (1) interest income of \$2,065 reported on federal Forms 1099-INT; (2) dividend income of \$109,624 reported on federal Forms 1099-DIV; (3) income of \$1,900 reported on a federal Forms 1099-MISC; and (4) proceeds from the sale of stocks, bonds, or commodities of \$1,132,521 reported on federal Forms 1099-B. Appellant's reported

¹ Appellant did not address the late-filing penalty or interest in her appeal. Therefore, OTA does not address the penalty and interest further.

- gross proceeds on these Forms 1099 totaled \$1,246,110.
3. FTB sent a Request for Tax Return to appellant stating that it believed, based on the federal reports, that appellant had a 2022 California tax filing requirement.
 4. Appellant did not respond, and FTB estimated appellant's income and issued a Notice of Proposed Assessment (NPA) proposing tax of \$137,571 and a late-filing penalty of \$34,392.75, plus applicable interest.
 5. Appellant protested the NPA with FTB alleging her income for 2022 totaled \$101,362.02, after reducing short-term sales proceeds by appellant's basis in some of the stocks sold that year. In support, appellant provided one page of a 26-page E*Trade Securities, LLC statement reporting realized short-term capital gain of \$101,366.02 (gross proceeds of \$638,638.49 minus reported basis of \$537,272.47). The one-page statement also reports additional gross proceeds of \$1,029,939.36 with an unknown term (short-term or long-term) and no reported basis.
 6. FTB issued appellant a Notice of Action affirming the NPA because based on the information submitted by appellant, she was required to file a California tax return.
 7. Appellant filed this timely appeal.

DISCUSSION

R&TC section 18501 requires every individual subject to the 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, when certain filing thresholds are exceeded. (R&TC, § 18501(a)(1)-(4).) If a taxpayer fails to file a return, then FTB, 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).) FTB 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 FTB proposes a tax assessment based on an estimate of income, FTB'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.*)

Here, FTB based its estimate on several federal Forms 1099 that reported appellant received substantial gross proceeds, totaling \$1,246,110 in 2022. The Forms 1099 constitute at least a minimal factual foundation to support FTB's estimate of appellant's income, and the

proposed assessment is therefore reasonable and rational. Consequently, the burden of proof shifts to appellant to establish error in FTB's proposed assessment.

Appellant contends in her appeal letter, signed August 18, 2025, that she and her spouse will file a tax return within "the next couple of months." Similarly, appellant stated in her protest letter to FTB, signed on July 25, 2025, that she and her spouse would be filing tax returns "soon." Appellant asserts that FTB combined proceeds with costs to determine her California taxable income. Appellant claims that her income from the sale of stocks in 2022 totaled \$101,366.02, not \$1,246,110 as estimated by FTB.

As of the date of this Opinion, OTA's record contains no evidence that appellant filed a California tax return that would provide FTB with the information needed to accurately calculate appellant's 2022 California taxes. Instead, appellant relies on a single page of a 26-page brokerage statement. While the one page provided by appellant does indicate that appellant had basis in some stocks that were sold for short-term capital gain, it does not explain which stock sales might be offset by basis. Moreover, even if short-term capital gains were offset by the reported basis, appellant does not address the additional reported stock sales proceeds of \$1,029,939.36 reported on that single page. Nor does appellant address additional gross proceeds reported on federal Forms 1099-INT, 1099-MISC, and 1099-DIV. Appellant makes assertions without providing evidence other than one page of a brokerage statement. Appellant's unsupported assertions cannot satisfy her burden of proof. (See *Appeal of Shanahan, supra.*)

HOLDING

Appellant has not established error in FTB's proposed assessment.

DISPOSITION

OTA sustains FTB's action proposing additional tax for the 2022 taxable year.

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Teresa A. Stanley
Administrative Law Judge

We concur:

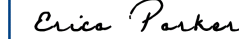
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Sheriene Anne Ridenour
Administrative Law Judge

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Erica Parker
Hearing Officer

Date Issued: 3/25/2026