

1 Board of Equalization, Appeals Division  
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4 **BOARD OF EQUALIZATION**  
5 **STATE OF CALIFORNIA**

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7 In the Matter of the Appeal of: ) **HEARING SUMMARY**  
8 **PATRICK MISSUD** ) **PERSONAL INCOME TAX APPEAL**  
9 ) Case No. 845292

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	<u>Year</u>	<u>Proposed Assessment Additional Tax</u>	<u>Penalties and Fee<sup>1</sup></u>
	2012	\$8,234	\$4,195

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14 Representing the Parties:

15 For Appellant: Patrick Missud  
16 For Franchise Tax Board: Brian Werking, Tax Counsel

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18 **QUESTIONS:** (1) Whether appellant has demonstrated error in the Franchise Tax Board's (FTB or  
19 respondent) proposed assessment of additional tax;  
20 (2) Whether appellant is entitled to the abatement of the late filing penalty;  
21 (3) Whether appellant is entitled to the abatement of the notice and demand (demand)  
22 penalty;  
23 (4) Whether the Board may grant appellant relief from the filing enforcement fee; and  
24 (5) Whether the Board should impose a frivolous appeal penalty.

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28 <sup>1</sup> The penalty and fee amounts consist of a late filing penalty of \$2,058.50, a notice and demand penalty of \$2,058.50, and a filing enforcement fee of \$78.00.

1 HEARING SUMMARY

2 Background

3 Appellant has not filed a 2012 California income tax return. After receiving information  
4 through its Integrated Non-Filer Compliance (INC) program, respondent determined that appellant  
5 received sufficient income to trigger the filing requirement<sup>2</sup> and issued a Demand for Tax Return  
6 (Demand) on February 12, 2014, demanding that appellant file a return or explain why no return was  
7 required. Thereafter, respondent issued a Notice of Proposed Assessment (NPA) on May 19, 2014,  
8 which stated that it had no record of receiving appellant's tax return or information indicating that he did  
9 not have a filing requirement. The NPA proposed an assessment of additional tax of \$8,234.00, a late  
10 filing penalty of \$2,058.50, a demand penalty of \$2,058.50, and a filing enforcement fee of \$78.00, plus  
11 interest. Appellant protested the NPA and respondent later affirmed its assessment in a Notice of Action  
12 dated August 19, 2014. This timely appeal followed. (Respondent's Opening Brief (ROB), pp. 1-2;  
13 Exs. A, B, C, E, F, G, & H.)

14 Appellant's Contentions

15 Appellant states that he is a federal informant and that his appeal letter has also been sent  
16 to federal law enforcement and syndicated media for maximum exposure. Appellant states that he is  
17 submitting official, self-authenticating state (spelled "\$tate") government and court records which are  
18 not subject to dismissal for any reason. Appellant states that an Article-4 Written Demand for Oral  
19 Hearing, for which he will waive all confidentiality, will be made 30 days from the conclusion of  
20 briefing. Appellant states that he waives all of his rights to the hearing's confidentiality, and will prove  
21 to criminal standards that the FTB and the Board knowingly assessed a "very excessive and bloated  
22 estimate" of his taxes to interfere with his federal whistle-blowing, and then illegally placed a lien on his  
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24 <sup>2</sup> Respondent learned from the State Bar of California that appellant held a valid and current license to engage in the practice  
25 of law and estimated that appellant earned income of \$106,312 by using the calculated average income of attorneys.  
26 Respondent calculated the amount by using the average of relevant business income amounts shown on the tax returns filed  
27 by attorneys and adjusting the average income result by the California consumer price index change for the year of  
assessment. In addition, First Clearing LLC filed a Form 1099-DIV reporting a payment to appellant of \$957 and California  
State Automobile ASSN I I B filed a Form 1099-MISC reporting a payment to appellant of \$12,000. (ROB, p. 2; Exs. C &  
D.)

28 For 2012, a single individual with no dependents was required to file a California income tax return if he realized gross  
income of \$15,440 or adjusted gross income of \$12,352. (ROB, p. 2.)

1 bank account in satisfaction. (Appellant’s Appeal Letter (AAL), pp. 1-2; attachments.)

2 Appellant states that the state is financially retaliating against him because he uncovered  
3 that “State agencies, agents, and judges are targeting a potential 38 million Californians for financial  
4 predation.” Appellant states that he has evidence of the state’s crimes of corruption and racketeering,  
5 and that racketeering state judges are in violation of the “Sunshine Ordinances” and “California’s Open  
6 Government Statutes”. Appellant states that a management conference was held in which a judge  
7 admitted that 135 state-issued subpoenas were not verifiably delivered to city and state defense  
8 attorneys, which is a cover-up of federal crimes. Appellant states that the City of San Francisco partners  
9 with the Department of Motor Vehicles to withhold vehicle re-registrations until “highly profitable,  
10 fraudulent, color-of-law citations are paid”, an extortion that targets 38 million Californians. Appellant  
11 states that his last two hearings in Traffic Court proved to criminal standards that the court “rubber-  
12 stamp[s] bogus City citations” to enable extortion and that the judges lied, illegally confiscated personal  
13 recordings, caused illegal state action when appellant was thrown out of the court by the police, and lied  
14 about the courtroom being wired for audio recordings. (AAL, pp. 2-3; attachments.)

15 Appellant states that his registered complaint proves to criminal standards that the State  
16 Bar stripped him of his quarter-million-dollar law license because he is working with the feds to bust  
17 corrupt state officials. Appellant states that his assessment is based on being a licensed attorney but that  
18 the State Bar “stole” his license on July 1, 2013. Appellant states that he filed a Motion for Summary  
19 Judgment and anticipates that the “Self-interested State judge” will “assist the State judicial defendant  
20 and State Bar by granting their respective Motion to Quash and Strike.” Appellant states that he filed  
21 his motion to pre-empt that illegal result and that federal colleagues will monitor the case to see if the  
22 judge will ignore irrefutable facts or instead continue covering-up for his corrupt state colleagues.  
23 Appellant states that his State Bar hearing was rigged and that the judges lied and ignored self-  
24 authenticating civil court transcripts. Appellant provides a list of judges who he states illegally favor  
25 corporations and “other deep pockets”. Appellant states that the hearing will be a “constitutionally  
26 desecrating decision” and lists other judges who will be petitioned who are already on record for rubber-  
27 stamping lower court “colleague’s brazen corruption and crystal-clear racketeering”. Appellant states  
28 that 44 judges are “ultra-corrupt” and “on the take” and are trying to take his quarter-million-dollar

1 license as retaliation for his federal whistle-blowing. (AAL, pp. 4-5; attachments.)

2 Appellant contends that it is ridiculous that he makes \$110,000 a year arguing cases  
3 before the same judges who he has exposed for over four years along with the feds. Appellant states that  
4 the judges always make sure he loses to save themselves from federal incarceration. Appellant states  
5 that the state knows that his income as an attorney was negative for the past several years due to the  
6 judge's ongoing criminal acts, cover-ups, and financial retaliation. Appellant states that that the above-  
7 listed court actions more than adequately support this appeal, which is based on new arguments. (AAL,  
8 p. 6; attachments.)

9 Appellant states that he does not want the FTB or the Board to feign that he did not  
10 exhaust all administrative remedies, so he is demanding an administrative jeopardy hearing. Appellant  
11 states that he will expose 44 state judges and the FTB and the Board for their "brazen financial  
12 retaliation" against him for blowing federal whistles. Appellant states that the FTB already liquidated  
13 his account and now expects payment for its perceived deficiency and that, in the upcoming hearing, he  
14 will explain that he has a "right to a free release, . . . and return of levied property...[since] the levy was  
15 not in accordance with the law." (AAL, pp. 6-7; attachments.)

16 Appellant states that the FTB and the Board are trying to shake him down to prevent his  
17 exposure of state judges and that state officials and judges will pay for their crimes with their freedom.  
18 Appellant states that he will be more than happy to set up the FTB and the Board to be raided, and that  
19 every FTB and Board employee will acknowledge the evidence in support of this appeal. Appellant  
20 states that this correspondence and the decision must be sent to the FTB and Washington DC's Public  
21 Corruption Unit. Appellant states that if he suffers any adverse consequences, because an employee or  
22 officer of the Board recklessly disregards procedures published by the Board, he will bring a highly  
23 public action for damages against the State in superior court. Appellant states that he will be contacting  
24 his Board Member directly and provide the Member with routine updates. Appellant states that he will  
25 file for the reimbursement of appeal expenses. Appellant states that a failure to follow the State's own  
26 rules will result in a federal investigation into the FTB and the Board. Appellant offers that the FTB  
27 come clean and reimburse the money it stole, admit that 44 State judges retaliated against him, that the  
28 State Bar stole his license, and that it "estimated bloated taxes", or else he will make the FTB "get

1 raided by the FBI.” (AAL, pp. 7-8; attachments.)

2 Appellant states that the Board and the FTB are lying that he is an attorney making  
3 \$119,269 per year because the two agencies want to steal more of his litigation funds after having  
4 already placed a lien on his bank account for \$4,727. Appellant states that he has enclosed a transcript  
5 of a hearing where he outed at least five corrupt State Bar members targeting Californians for millions  
6 of dollars in fraud. Appellant states that he is a five-year federal mole whose job is to oppose the State  
7 Bar as a RICO network which protects corrupt State Bar members and corrupt judges. Appellant  
8 provides websites to showcase the extreme fraud and other crimes committed by State officials and  
9 judges, who appellant states are the worst criminals in the nation and plans on “having all of them  
10 imprisoned until dead for their lie\$, treason, and other much higher crimes.” (Appellant’s Reply Brief  
11 (ARB), pp. 1-3; attachments.)

12 Appellant states that he had no income for the past several years because he has been a  
13 federal mole and Qui-Tam Relator who only gets paid when officials and judges go to prison or are  
14 executed for high crimes like retaliation against federal whistle-blowing, racketeering, and treason.  
15 Appellant states that he has been setting up corrupt judges in their kangaroo courts of law for  
16 convictions under state and federal laws and attaches recent actions he has taken to make sure that state  
17 judges and officials are exposed and then either “rot in prison” or are “put to death in California’s gas  
18 chamber.” (ARB, p. 4; attachments.)

### 19 Respondent’s Contentions

20 The FTB asserts that, in the absence of a return providing the relevant information  
21 necessary to accurately determine a tax liability, respondent may estimate a taxpayer’s net income from  
22 “any available information” and assess the amount of tax, interest, and penalties due, pursuant to  
23 R&TC section 19087. The FTB states that, when a taxpayer fails to file a return, respondent has great  
24 latitude to seek data and the authority to request and use information, citing the *Appeal of Walter R.*  
25 *Bailey*, 92-SBE-001, decided by the Board on February 20, 1992. The FTB asserts that its  
26 determinations and assessments for unpaid taxes are presumed correct when supported by a minimal  
27 factual foundation, citing *Palmer v. Internal Revenue Service* (9th Cir. 1997) 116 F.3d 1309. The FTB  
28 argues that appellant has not denied receiving the income that formed the basis for the proposed

1 assessment and has not presented any evidence demonstrating error in the proposed assessment. (ROB,  
2 pp. 3-4.)

3           The FTB contends that the late filing penalty was properly imposed pursuant to R&TC  
4 19131 and that appellant has not presented any evidence of reasonable cause to support the abatement  
5 of the penalty.<sup>3</sup> The FTB states that respondent issued a Demand and an NPA to appellant for 2011,  
6 and that appellant has not filed a valid return since his 2010 return, which was two years late, and that  
7 he untimely filed his 2009 return after an NPA was issued. The FTB asserts that it properly imposed  
8 the filing enforcement fee pursuant to R&TC section 19254, and that there is no reasonable cause  
9 exception to the fee. The FTB states that appellant was informed that he could be assessed a frivolous  
10 appeal penalty pursuant to R&TC section 19714 if his position on appeal was found to be frivolous and  
11 that his prior conduct is relevant in determining whether the Board should impose a frivolous appeal  
12 penalty. (ROB, p. 5.)

### 13           Applicable Law

#### 14                   Proposed Assessment of Tax

15           R&TC section 17041 imposes a tax “. . . upon the entire taxable income of every  
16 resident of this state . . .”<sup>4</sup> R&TC section 18501 requires every individual subject to the Personal  
17 Income Tax to make and file a return with the FTB “stating specifically the items of the individual’s  
18 gross income from all sources and the deductions and credits allowable . . .” R&TC section 19087,  
19 subdivision (a), provides:

20           If any taxpayer fails to file a return, or files a false or fraudulent return with intent to  
21 evade the tax, for any taxable year, the Franchise Tax Board, at any time, may require a  
22 return or an amended return under penalties of perjury or may make an estimate of the net  
23 income, from any available information, and may propose to assess the amount of tax,  
24 interest, and penalties due.

24           If the FTB makes a tax assessment based on an estimate of income, the FTB’s initial  
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26 <sup>3</sup> Respondent does not discuss the demand penalty in its contentions. Nevertheless, staff notes that the FTB met the  
27 regulatory requirement for the demand penalty (i.e., that the FTB issued an NPA after appellant failed to respond to a  
28 Request or a Demand at some time during the four taxable years preceding the year in which the Demand was issued). Here,  
the FTB previously issued a Demand, and then an NPA, for the 2011 tax year.

<sup>4</sup> It appears undisputed that appellant resided in California during the year at issue.

1 burden is to show why its assessment is reasonable and rational. (*Todd v. McColgan* (1949)  
2 89 Cal.App.2d 509; *Appeal of Michael E. Myers*, 2001-SBE-001, May 31, 2001.)<sup>5</sup> Federal courts have  
3 held that the taxing agency need only introduce some evidence linking the taxpayer with the unreported  
4 income. (See *Rapp v. Commissioner* (9th Cir. 1985) 774 F.2d 932.) When a taxpayer fails to file a  
5 valid return, respondent's use of income information from various sources to estimate a taxpayer's  
6 taxable income is a reasonable and rational method of estimating taxable income. (See *Palmer v.*  
7 *Internal Revenue Service*, *supra*, 116 F.3d 1309, 1313; *Andrews v. Commissioner*, T.C. Memo. 1998-  
8 316; *Giddio v. Commissioner* (1970) 54 T.C. 1530, 1533; *Appeal of Walter R. Bailey*, *supra*; *Appeal of*  
9 *R. and Sonja J. Tonsberg*, 85-SBE-034, Apr. 9, 1985.)

10           Once the FTB has met its initial burden, the assessment is presumed correct and the  
11 taxpayer has the burden of proving it to be wrong. (*Todd v. McColgan*, *supra*; *Appeal of*  
12 *Michael E. Myers*, *supra*.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of  
13 proof. (*Appeal of Aaron and Eloise Magidow*, 82-SBE-274, Nov. 17, 1982.) In the absence of  
14 uncontradicted, credible, competent, and relevant evidence showing error in the FTB's determinations,  
15 respondent's proposed assessments must be upheld. (*Appeal of Oscar D. and Agatha E. Seltzer*,  
16 80-SBE-154, Nov. 18, 1980.) A taxpayer's failure to produce evidence that is within his or her control  
17 gives rise to a presumption that such evidence is unfavorable to his case. (*Appeal of Don A. Cookston*,  
18 83-SBE-048, Jan. 3, 1983.)

#### 19           Late Filing Penalty

20           R&TC section 19131 provides that a late filing penalty shall be imposed when a  
21 taxpayer fails to file a tax return on or before its due date, unless the taxpayer establishes that the late  
22 filing was due to reasonable cause and not due to willful neglect. When the FTB imposes a late filing  
23 penalty, the law presumes that the penalty was imposed correctly. (*Todd v. McColgan*, *supra*; *Appeal*  
24 *of Yvonne M. Goodwin*, 97-SBE-003, Mar. 19, 1997.) To establish reasonable cause, a taxpayer must  
25 show that the failure to file a return occurred despite the exercise of ordinary business care. (*Appeal of*  
26 *Howard G. and Mary Tons*, 79-SBE-027, Jan. 9, 1979; *Appeal of Stephen C. Bieneman*, 82-SBE-148,  
27

28 <sup>5</sup> Board of Equalization cases (designated "SBE") may generally be found at: [www.boe.ca.gov](http://www.boe.ca.gov).

1 July 26, 1982.) The taxpayer's reason for failing to file must be such that an ordinarily intelligent and  
2 prudent business person would have acted similarly under the circumstances. (*Appeal of Joseph W.*  
3 *and Elsie M. Cummings*, 60-SBE-040, Dec. 13, 1960.)

#### 4 Demand Penalty

5 California imposes a penalty for the failure to file a return or to provide information  
6 upon the FTB's demand to do so, unless reasonable cause prevented the taxpayer from responding to  
7 the demand. (Rev. & Tax. Code, § 19133.) The FTB will only impose a demand penalty if the  
8 taxpayer fails to respond to a current Demand for Tax Return and the FTB issues an NPA under the  
9 authority of R&TC section 19087, subdivision (a), after the taxpayer failed to timely respond to a  
10 Request for Tax Return or a Demand for Tax Return at any time during the four taxable years  
11 preceding the year for which the current Demand for Tax Return is being issued. (Cal. Code Regs.,  
12 tit. 18, § 19133, subd. (b).) When the FTB imposes a demand penalty, the law presumes that the  
13 penalty was imposed correctly. (*Todd v. McColgan, supra; Appeal of Yvonne M. Goodwin, supra.*) To  
14 establish reasonable cause, a taxpayer must show that the failure to respond to a demand occurred  
15 despite the exercise of ordinary business care. (*Appeal of Stephen C. Bieneman, supra.*) The  
16 taxpayer's reason for failing to respond must be such that an ordinarily intelligent and prudent business  
17 person would have acted similarly under the circumstances. (*Appeal of Joseph W. and Elsie M.*  
18 *Cummings, supra.*)

#### 19 Filing Enforcement Fee

20 R&TC section 19254 provides that, if the FTB mails a formal legal demand for a tax  
21 return to a taxpayer, a filing enforcement cost recovery fee is required to be imposed when the taxpayer  
22 fails or refuses to file the return within the 25-day period. (Rev. & Tax. Code, § 19254, subd. (a)(2).)  
23 Once properly imposed, there is no provision in the Revenue and Taxation Code which would excuse  
24 the FTB from imposing the filing enforcement cost recovery fee for any circumstances, including  
25 reasonable cause. (Rev. & Tax. Code, § 19254.)

#### 26 Frivolous Appeal Penalty

27 The Board may impose a penalty of up to \$5,000 whenever it appears to the Board that  
28 proceedings before it have been instituted or maintained primarily for delay or that the position is

1 frivolous or groundless. (Rev. & Tax. Code, § 19714; Cal. Code Regs., tit., 18, § 5454.) The following  
2 factors are considered in determining whether, and in what amount, to impose the penalty: (1) whether  
3 the taxpayer is making arguments that have been previously rejected by the Board in a Formal Opinion  
4 or by courts; (2) whether the taxpayer is repeating arguments that he or she made in prior appeals;  
5 (3) whether the taxpayer filed the appeal with the intent of delaying legitimate tax proceedings or the  
6 legitimate collection of tax owed; and (4) whether the taxpayer has a history of filing frivolous appeals  
7 or failing to comply with California’s tax laws. (Cal. Code Regs., tit. 18, § 5454.) The Board may  
8 consider other relevant factors in addition to the factors listed above. (Cal. Code Regs., tit. 18, § 5454.)  
9 A taxpayer’s prior pattern and practice of conduct is relevant when determining whether to impose a  
10 frivolous appeal penalty and in what amount. (*Appeal of Alfons Castillo*, 92-SBE-020, July 20, 1992.)

11 STAFF COMMENTS

12 Appellant has not filed a tax return for the year at issue. He asserts that he had no  
13 income for the past several years because he was a federal mole and “Qui-Tam Relator” who only gets  
14 paid when officials go to prison or are executed for high crimes like retaliation against federal whistle-  
15 blowing. Appellant asserts that he has been working to make sure that state judges and officials are  
16 exposed and then either “rot in prison” or are “put to death in California’s gas chamber.”

17 As noted above, the Board may impose a penalty of up to \$5,000 whenever it appears to  
18 the Board that proceedings before it have been instituted or maintained primarily for delay or that the  
19 position is frivolous or groundless. Staff notes that this appears to be appellant’s first appeal of this  
20 nature. In addition, staff notes that appellant was notified in the NOA, and in a letter from Board staff  
21 dated October 16, 2014, that the Board may impose a frivolous appeal penalty.