

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:

**J. SOUZA**

) OTA Case No. 22029673  
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**OPINION**

Representing the Parties:

For Appellant:

J. Souza

For Respondent:

Di T. Nguyen, Graduate Student Assistant

A. VASSIGH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, J. Souza (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$3,481.00, a late-filing penalty of \$870.25, and applicable interest, for the 2019 tax year.

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.1.) Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

**ISSUES**

1. Whether appellant has proven error in FTB’s proposed assessment of tax.
2. Whether appellant has established reasonable cause for failing to timely file his 2019 tax return.
3. Whether appellant has established a basis for the abatement of interest.

FACTUAL FINDINGS

1. FTB obtained information indicating appellant had received income that triggered a California filing requirement for the 2019 tax year.
2. For the 2019 tax year, a single individual, under age 65, with no dependents realizing California gross income of \$18,241 or California adjusted gross income of \$14,593 was required to file a California income tax return.
3. FTB's records did not show that appellant filed a California income tax return for the 2019 tax year. FTB issued appellant a Request for Tax Return (Request) dated September 14, 2021, requesting that appellant file a tax return for the 2019 tax year or provide a completed Form 4602G ENS, Reply to FTB – Questionnaire, showing that appellant had no filing requirement for the 2019 tax year, by October 20, 2021.
4. When appellant did not respond to the Request, FTB sent appellant a Notice of Proposed Assessment (NPA) dated November 12, 2021, proposing tax based on an estimate of appellant's income and imposing a late-filing penalty, plus interest.
5. In a protest letter, appellant protested the proposed assessment amount, but did not otherwise address the NPA. Instead, appellant stated that he reduced his 2019 federal tax liability and would be able to pay the federal tax due "after confirmation of [the] protest." Attached to appellant's protest letter are copies of the NPA and documents appellant received from the IRS concerning his 2019 federal tax liability.
6. FTB issued a Notice of Action (NOA) affirming the NPA. The NOA states that based on the information he provided in his protest letter, appellant still had a requirement to file a 2019 California tax return.
7. Appellant then filed this timely appeal.
8. On appeal, appellant contends that he filed his 2019 original federal tax return with a typo in his dependent's social security number, which prevented him from receiving a credit, and he subsequently filed an amended federal tax return. Appellant provides on appeal copies of his original and amended 2019 federal tax returns (Forms 1040 and 1040-X), listing appellant's address in California, as well as his federal Form 2441, Child and Dependent Care Expenses, his federal Schedule 3, Additional Credits and Payments, and a 2019 Form W-2, Wage and Tax Statement, issued to appellant at a California address by an employer, listing appellant's wages and federal and state income tax withholdings.

## DISCUSSION

### Issue 1: Whether appellant has proven error in FTB’s proposed assessment of tax.

California residents are taxed upon their entire taxable income (regardless of source). (R&TC, § 17041(a).) R&TC section 18501 requires every individual subject to the Personal Income Tax Law, whose gross income or adjusted gross income from all sources exceeds certain filing thresholds, to make and file a tax return with FTB “stating specifically the items of the individual’s gross income from all sources and the deductions and credits allowable…….” (R&TC, § 18501(a)(1)-(4).) R&TC section 19087(a) provides that if any taxpayer fails to file a tax return, 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.”

When FTB proposes a tax assessment based on an estimate of income, its initial burden is to show why its proposed assessment is reasonable and rational. (*Appeal of Bindley*, 2019-OTA-179P.) The taxing agency need only introduce some minimal factual foundation to support the assessment of tax. (*Ibid.*) When a taxpayer fails to file a valid tax return, FTB’s use of income information from various sources may be a reasonable and rational method of estimating taxable income. (See *Palmer v. Internal Revenue Service* (9th Cir. 1997) 116 F.3d 1309, 1313.) Once FTB has met its initial burden, its determination is presumed correct, and the taxpayer has the burden of proving it is wrong. (*Appeal of Bindley, supra.*) The applicable burden of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(c); *Appeal of Estate of Gillespie*, 2018-OTA-052P.) In the absence of credible, competent, and relevant evidence showing error in FTB’s determination, the determination must be upheld. (*Appeal of Bindley, supra.*)

Here, appellant did not file a California income tax return for the 2019 tax year. The copies of the 2019 federal tax returns and the 2019 Form W-2 appellant provides on appeal indicate that appellant lived in California and earned taxable income in 2019. The amounts listed on the NPA for appellant’s estimated income and California income tax withholdings are the same amounts reported on the 2019 Form W-2 appellant produced on appeal. Therefore, FTB met its initial burden. Since FTB has met its initial burden, its determination is presumed correct, and appellant has the burden of proving it is wrong. (See *Appeal of Bindley, supra.*)

Appellant does not actually argue against the proposed assessment on appeal. Appellant only states that he filed his 2019 original federal tax return with a typo in his dependent’s social

security number, which prevented him from receiving a credit, and he later filed a 2019 amended federal tax return.<sup>1</sup> Appellant has not produced a copy of a 2019 California tax return or any information indicating that he did not have a filing requirement or explaining what he believes the proper California tax amount should be. Appellant has not made any arguments or provided evidence to show that FTB's proposed assessment of tax is in error. Accordingly, appellant has not carried his burden of showing error in FTB's proposed assessment of tax.

Issue 2: Whether appellant has established reasonable cause for failing to timely file his 2019 tax return.

California imposes a penalty for the failure to file a tax 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.) When FTB imposes a penalty, the law presumes that the penalty was imposed correctly, and the burden of proof is on the taxpayer to establish otherwise. (*Appeal of Xie*, 2018-OTA-076P.) To overcome the presumption of correctness attached to the penalty, a taxpayer must provide credible and competent evidence supporting a claim of reasonable cause; otherwise, the penalty cannot be abated. (*Ibid.*) To establish reasonable cause, a taxpayer must show that the failure to file a timely tax 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 Belcher*, 2021-OTA-284P.)

Appellant does not proffer any argument or evidence in support of reasonable cause for his late filing. As discussed above, appellant's argument on appeal pertains to his federal tax returns. Appellant does not contend that the typo on his original federal tax return impacted his ability to timely file his California tax return. He does not address the late-filing penalty at all. Accordingly, appellant has not shown that his failure to file a timely tax return was due to reasonable cause and not due to willful neglect.

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<sup>1</sup> On his original and amended federal returns, appellant claimed the head of household filing status. FTB presumes that a taxpayer is a single individual with no dependents and is eligible only for the standard deduction until the taxpayer files a California tax return and establishes that he or she is entitled to a different filing status and the claimed exemptions, credits, and deductions. The NPA indicates that, although the proposed assessment is based on a single individual with no dependents and the standard deduction, FTB "will revise any difference in filing status, additional deductions, exemptions, or credits when you file your required tax return."

Issue 3: Whether appellant has established a basis for the abatement of interest.

Tax is due on the original due date of the tax return without regard to any filing extension. (R&TC, § 19001.) If any amount of tax is not paid by the due date, interest is required to be imposed from the due date until the date the taxes are paid. (R&TC, § 19101(a.) Imposition of interest is mandatory; it is not a penalty, but it is compensation for a taxpayer's use of money after it should have been paid to the state. (*Appeal of Moy*, 2019-OTA-057P.) There is no reasonable cause exception to the imposition of interest. (*Ibid.*) To obtain relief from interest, a taxpayer must qualify under the provisions of R&TC sections 19104, 19112, or 21012.<sup>2</sup> (*Ibid.*) Appellant does not address the abatement of interest issue at all. Appellant therefore has not shown that he qualifies for abatement of interest under the provisions of R&TC sections 19104, 19112 or 21012.

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<sup>2</sup> Under R&TC section 19104, FTB is authorized to abate or refund interest if there has been an unreasonable error or delay in the performance of ministerial or managerial act by an employee of FTB. R&TC section 21012 may apply when there has been reliance on written advice requested of FTB. Appellant does not allege any unreasonable error or delay by FTB or that he relied upon written advice from FTB. Finally, Office of Tax Appeals does not have jurisdiction to review FTB's denial of a taxpayer's request for waiver of interest due to extreme financial hardship pursuant to R&TC section 19122. (*Appeal of Moy, supra.*)

HOLDINGS

1. Appellant has not proven error in FTB’s proposed assessment of tax.
2. Appellant has not established reasonable cause for failing to timely file his 2019 tax return.
3. Appellant has not established a basis for the abatement of interest.

DISPOSITION

FTB’s action is sustained.

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Amanda Vassigh  
Administrative Law Judge

Date Issued: 12/27/2022