

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**W. BARNES**

) OTA Case No. 220610689  
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**OPINION**

Representing the Parties:

For Appellant: W. Barnes

For Respondent: Camille Dixon, Attorney

L. KATAGIHARA, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, W. Barnes (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$9,667.00, a late filing penalty of \$2,416.75, and applicable interest, for the 2019 tax year.<sup>1</sup>

Appellant waived the right to an oral hearing; therefore, the Office of Tax Appeals (OTA) decides the matter based on the written record.

**ISSUES**

1. Whether appellant has established error in FTB’s determination related to appellant’s itemized deductions.
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 2019 tax year.
2. FTB was informed through its Integrated Non-Filer Compliance Program that appellant received sufficient income in 2019 to trigger a California filing requirement. FTB therefore issued a Request for Tax Return (Request) for the 2019 tax year to appellant.

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<sup>1</sup> As further explained below, FTB has since reduced the proposed additional tax and late filing penalty to \$9,089.00 and \$2,272.25, respectively.

3. In response, appellant informed FTB that she mailed her 2019 tax return to FTB on July 1, 2020. Appellant did not provide a copy of the tax return or any documentation substantiating that she previously mailed the tax return to FTB.
4. Due to the absence of a filed return, FTB estimated appellant's income using the information available to it and issued a Notice of Proposed Assessment (NPA) for the 2019 tax year. The NPA provided a standard deduction of \$4,537 but did not apply any exemption credits.<sup>2</sup>
5. Appellant protested the NPA. Thereafter, FTB issued a Notice of Action (NOA), affirming the NPA. Appellant timely appealed FTB's NOA.
6. On December 19, 2022, appellant filed her 2019 tax return. In that return, appellant reported an adjusted gross income (AGI) that was \$5,256 more than the amount FTB estimated when it issued the NPA. Appellant also claimed itemized deductions totaling \$27,263, which included a \$24,000 mortgage interest deduction.<sup>3</sup>
7. FTB accepted appellant's reported AGI. FTB also accepted appellant's itemized deductions, but reduced appellant's claimed mortgage interest deduction. According to a Wage and Income Transcript FTB received from the IRS, appellant only paid \$12,134 (not \$24,000) in mortgage interest in 2019. Consequently, FTB reduced appellant's mortgage interest deduction by \$11,866, and accepted a total of \$15,397 in itemized deductions.
8. Based on appellant's increased AGI (as reported by appellant) and itemized deductions (as revised by FTB), FTB reduced its proposed assessment to additional tax of \$9,089.00, a late filing penalty of \$2,272.25, and applicable interest.

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<sup>2</sup> FTB determined that appellant did not qualify for any of the exemption credits (i.e., appellant did not have any dependents, was under the age of 65, has not argued that she is visually impaired, and had an estimated adjusted gross income that exceeded the maximum allowable income to qualify for the personal exemption credit).

<sup>3</sup> R&TC section 17201(a) incorporates the sections of the Internal Revenue Code (IRC) related to itemized deductions for individuals (i.e., Part VI of Subchapter B of Chapter 1 of Subtitle A of the IRC), except as otherwise provided.

## DISCUSSION

### Issue 1: Whether appellant has established error in FTB’s determination related to appellant’s itemized deductions.

California imposes a tax on the entire taxable income of its residents. (R&TC, § 17041(a).) Every individual subject to California’s personal income tax shall file a tax return stating, among other items, their income and allowable deductions and credits. (R&TC, § 18501(a).) Income tax deductions are a matter of legislative grace, and a taxpayer who claims a deduction has the burden of proving by competent evidence that he or she is entitled to that deduction or credit. (*Appeal of Vardell*, 2020-OTA-190P.) In the absence of credible, competent, and relevant evidence showing error in FTB’s determination, FTB’s determination must be upheld. (*Appeal of Johnson*, 2022-OTA-166P.)

On appeal, appellant argues that FTB miscalculated the amount of mortgage interest she paid in 2019. In support of her argument, appellant provides a transaction history of her mortgage account for the period August 23, 2018, through February 4, 2020. This document reflects that appellant made payments during the 2019 calendar year totaling \$12,134.43.<sup>4</sup> Taking into account rounding, this is the same amount reflected on the Wage and Income Transcript, which FTB relied upon to determine the amount of mortgage interest appellant paid. Therefore, appellant has not established error in FTB’s determination.

Appellant also contends the inclusion of the \$15,397 in itemized deductions (and/or the \$12,134 attributable to the mortgage interest deduction) should further reduce FTB’s proposed tax assessment. In its NPA, FTB estimated appellant’s AGI and allowed a standard deduction of \$4,537. However, appellant’s reported AGI was \$5,256 *higher* than FTB’s original estimation. In addition, the standard deduction of \$4,537 that FTB applied in the NPA was replaced with the itemized deductions totaling \$15,397 (as discussed above). The net effect of these two changes was a \$5,604 reduction of appellant’s taxable income and a \$578 reduction in tax. Therefore, FTB’s calculated reduction is accurate and appellant has not established error in FTB’s determination.

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<sup>4</sup> The transaction history also included payments that appellant paid in 2018 and 2020. Some of appellant’s payments were due in 2019 but not paid until 2020. However, only payments made during the 2019 calendar year qualify towards appellant’s 2019 mortgage interest deduction. (See R&TC, § 17201(a).)

Issue 2: Whether appellant has established reasonable cause to abate the late filing penalty.

A late filing penalty will be imposed when a taxpayer fails to file a tax return on or before its due date, unless the taxpayer establishes that the late filing was due to reasonable cause and was not due to willful neglect.<sup>5</sup> (R&TC, § 19131(a).) When FTB imposes a late filing penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) The burden of proof is on the taxpayer to show, by providing credible and competent evidence, that reasonable cause exists to support abating the penalty. (*Ibid.*) 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 an ordinarily intelligent and prudent businessperson would have so acted under similar circumstances. (*Appeal of Belcher*, 2021-OTA-284P.)

Appellant's 2019 tax return was due July 15, 2020.<sup>6</sup> FTB received appellant's 2019 tax return on December 19, 2022. Therefore, the late filing penalty was properly imposed. Appellant argues, however, that prior to her December 19, 2022 filing, she timely filed her taxes by mail. Yet, appellant has provided no evidence to confirm such mailing, and unsupported assertions will not satisfy appellant's burden to show that her failure to file a timely return occurred despite the exercise of ordinary business care and prudence. (See *Appeal of Xie*, *supra*.)

Based on the foregoing, appellant has failed to show reasonable cause exists to support abating the late filing penalty.

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<sup>5</sup> FTB has not asserted that appellant willfully neglected to timely file her tax return. Therefore, the only issue is whether appellant has established reasonable cause to abate the late filing penalty.

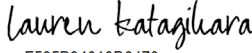
<sup>6</sup> In response to COVID-19, FTB postponed the deadline to file a 2019 tax return to July 15, 2020. (See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2020-3-state-postpones-tax-deadlines-until-july-15-due-to-the-covid-19-pandemic.html>; FTB Notice 2020-02.)

HOLDINGS


1. Appellant has not established error in FTB’s determination related to appellant’s itemized deductions.
2. Appellant has not established reasonable cause to abate the late filing penalty.


DISPOSITION

FTB’s action is sustained in full.

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 Lauren Katagihara  
 Administrative Law Judge

We concur:

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 Keith T. Long  
 Administrative Law Judge

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 Andrew J. Kwee  
 Administrative Law Judge

Date Issued: 10/10/2023