

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 220710922
E. ABRAM)
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OPINION

Representing the Parties:

For Appellant: E. Abram
For Respondent: Joel M. Smith, Attorney

M. GEARY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, E. Abram (appellant) appeals an action by the Franchise Tax Board (respondent) proposing additional tax of \$6,643.00, a late-filing penalty of \$1,660.75, a demand penalty of \$1,660.75, a filing enforcement fee of \$97.00, and applicable interest for the 2019 tax year.

Office of Tax Appeals (OTA) Administrative Law Judges Huy “Mike” Le, Amanda Vassigh, and Michael F. Geary held an oral hearing for this matter in Sacramento, California, on May 17, 2023. At the conclusion of the hearing, the record was held open at appellant’s request to allow appellant additional time to file a 2019 income tax return. OTA closed the record on June 29, 2023.¹

ISSUES

1. Is appellant entitled to an adjustment to the proposed tax?
2. Should the late-filing penalty be abated?
3. Should the demand penalty be abated?
4. Should the filing enforcement fee be abated?

¹ Judge Geary’s post hearing orders stated that if appellant failed to file his 2019 income tax return by June 16, 2023, the record would close on that date, but OTA later notified the parties by letter that the record closed on June 29, 2023.

FACTUAL FINDINGS

1. In 2017, respondent proposed an assessment of tax against appellant after appellant failed to timely respond to a Demand for Tax Return (Demand) issued by respondent.²
2. Appellant also failed to file a California income tax return (return) for the 2019 tax year.
3. Respondent obtained information indicating that appellant earned wages of \$107,731 during 2019, which income required appellant to file a return.
4. Respondent issued a November 9, 2021 Demand to appellant, which instructed appellant to respond by December 15, 2021 by: filing a 2019 return; providing a copy of his 2019 return, if appellant had already filed one; or explaining why appellant was not required to file a 2019 return.
5. Appellant requested additional time to respond to the Demand. Respondent granted the request, allowing appellant until January 15, 2022, to respond.
6. Appellant did not respond to the Demand.
7. Respondent issued a February 18, 2022 Notice of Proposed Assessment (NPA) to appellant. The NPA proposed assessment of the tax and penalties at issue in this appeal, plus applicable interest.
8. Appellant protested the NPA, but other than stating his disagreement with the proposed assessment amounts, appellant did not allege facts other than those relied upon by respondent, and he did not state arguments, describe evidence, or provide any evidence to support the protest.
9. Respondent issued a June 14, 2022 Notice of Action affirming the NPA.
10. This timely appeal followed.

DISCUSSION

Issue 1: Is appellant entitled to an adjustment to the proposed tax?

Respondent's determination is presumed correct, and the taxpayer has the burden of proving error. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of GEF Operating Inc.*, 2020-OTA-

² Respondent issued the Demand on April 18, 2017, for the 2015 tax year. Respondent issued the Notice of Proposed Assessment to appellant for that same year on June 26, 2017.

057P.) In the absence of credible, competent, and relevant evidence showing that respondent's determination is incorrect, it must be upheld. (*Appeal of Johnson*, 2022-OTA-166P.)

Appellant has not explained the basis for this appeal. He has neither made an argument, other than his general opposition to the NOA, nor offered evidence, and appellant still has not filed a return for 2019. OTA finds there is no factual or legal basis upon which to order an adjustment to the proposed tax of \$6,643 and that appellant's appeal of the tax amount has no substance or merit.

Issue 2: Should the late-filing penalty be abated?

With certain limitations not relevant here, R&TC section 19131 requires respondent to impose a penalty when a taxpayer does not file a return on or before its due date, unless the taxpayer shows that the late filing was due to reasonable cause and not due to willful neglect. Appellant would normally have been required to file his 2019 return by April 15, 2020 (R&TC, § 18566), but respondent postponed that due date to July 15, 2020.³ In addition, R&TC section 18567(a) provides that respondent may grant a taxpayer up to six more months to file a return, and the corresponding regulation (Cal. Code Regs., tit. 18, § 18567) provides for an automatic six-month extension without a written request. However, if a taxpayer does not file the return by the extended due date, no valid extension exists, and the late-filing penalty is computed by reference to the original due date of the return. (*Ibid.*)

When respondent imposes a penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA- 076P.) To overcome that presumption, appellants must provide credible and competent evidence supporting a claim for relief. (*Ibid.*) Here, appellant protested respondent's proposal to impose this penalty but offered no argument or evidence to support the protest. Now appellant appeals respondent's denial of the protest, but again he offers no argument or evidence to support his appeal. OTA therefore finds that appellant's appeal of the late-filing penalty also has no substance or merit.

³ Due to the COVID-19 State of Emergency, respondent postponed the 2019 return due date to July 15, 2020. (See FTB Notice 2020-02.)

Issue 3: Should the demand penalty be abated?

If any taxpayer fails or refuses to file a return, or furnish any information, in response to a written request or demand by respondent, respondent may add a penalty of 25 percent of the amount of any tax assessment for which the return or other information was requested or demanded, unless the taxpayer establishes that the failure to file the return or provide the information was due to reasonable cause and not due to willful neglect. (R&TC, § 19133.) The two conditions for imposition of the penalty are that: (1) the taxpayer has failed to respond to a current request or demand in the manner prescribed; and (2) respondent has proposed an assessment of tax under the authority of R&TC section 19087(a) after the taxpayer failed to timely respond to a request or a demand in the manner prescribed at any time during the four-taxable year immediately preceding the taxable year for which the current request or demand was issued. (Cal. Code Regs., tit. 18, § 19133(b)(1)-(2).)

As previously stated, penalties are presumed to have been correctly imposed by respondent. (*Appeal of Xie, supra.*) Furthermore, in this instance, the evidence establishes that all conditions for imposition of the demand penalty are present. As with the three issues just discussed, appellant has not made an argument or provided any evidence to support his request for abatement. Consequently, OTA finds that appellant's appeal of the demand penalty has no substance or merit.

Issue 4: Should the filing enforcement fee be abated?

As relevant here, R&TC section 19254 requires respondent to impose a filing enforcement fee when a taxpayer fails to file a return within 25 days after respondent mails formal legal demand to file a return to the taxpayer. The amount of the fee is set annually to reflect actual enforcement costs. (R&TC, § 19254.)


Appellant has not made an argument or provided evidence to support his appeal of the proposed fee. It is undisputed that respondent sent a Demand to appellant and that appellant did not file a return within the required time. There is no legal authority for abatement of or relief from the fee, even on a showing that the failure to file the return was due to reasonable cause. (See R&TC, § 19254.) OTA finds that appellant's appeal of the filing enforcement fee also has no substance or merit.

HOLDINGS


1. Appellant is not entitled to an adjustment to the proposed tax.
2. Appellant is not entitled to abatement of the late-filing penalty.
3. Appellant is not entitled to abatement of the demand penalty.
4. Appellant is not entitled to abatement of the filing enforcement fee.


DISPOSITION

Respondent’s action is sustained in full.

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 Michael F. Geary
 Administrative Law Judge

We concur:

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 Huy “Mike” Le
 Administrative Law Judge

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 Amanda Vassigh
 Administrative Law Judge

Date Issued: 9/21/2023