

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

In the Matter of the Appeal of: ) OTA Case No. 220510378  
A. JONES )  
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**OPINION**

Representing the Parties:

For Appellant: A. Jones

For Respondent: Noel Garcia-Rosenblum, Attorney

R. TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, A. Jones (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing a late filing penalty of \$135, a demand penalty of \$397, a filing enforcement fee and cost collection recovery fee of \$401 in total, and applicable interest for the 2016 tax year.<sup>1</sup>

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

**ISSUES**

1. Whether appellant has shown reasonable cause existed to abate the late filing penalty for the 2016 tax year.
2. Whether appellant has shown reasonable cause existed to abate the demand penalty for the 2016 tax year.
3. Whether appellant has shown entitlement to interest abatement for the 2016 tax year.
4. Whether appellant has shown FTB erred in imposing the filing enforcement fee and the collection cost recovery fee for the 2016 tax year.

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<sup>1</sup> There is some discrepancy in the record as to the amount in controversy. In appellant’s appeal, appellant listed the amount on appeal as \$925. However, appellant disputes FTB’s imposition of “all penalties, fees and interest,” which is consistent with respondent’s Notice of Determination Not To Abate Interest dated April 6, 2022. Thus, OTA’s jurisdiction is not limited to the \$925 appellant lists in her appeal letter, but includes all amounts respondent imposed for penalties, fees and interest for the 2016 tax year.

FACTUAL FINDINGS

1. Appellant did not file a timely 2016 California income tax return.
2. However, on July 10, 2017, appellant filed her 2014 California income tax return using a California address in the city of Pasadena (the Pasadena address).
3. On April 5, 2018, FTB issued a Demand for Tax Return (Demand) instructing appellant to file a 2016 California income tax return, or provide evidence that appellant already filed the return or did not have a filing requirement. FTB sent the notice to appellant's Pasadena address.
4. FTB received no response and issued a Notice of Proposed Assessment (NPA) on June 4, 2018 addressed to appellant's Pasadena address. FTB's proposed assessment included the late filing penalty, the demand penalty and a filing enforcement fee.
5. FTB received no response to its NPA; consequently, FTB's proposed assessment went final. After FTB received no payment, it initiated collection action to recover the balance due.
6. On September 15, 2019, FTB received appellant's 2016 California income tax return via mail, which used the Pasadena address.<sup>2</sup> FTB processed the return and issued a notice dated October 8, 2019, which was sent to the Pasadena address, to notify appellant of the remaining balance due and the imposition of a collection cost fee.
7. On October 9, 2020, FTB received a Request for Abatement of Interest and a Reasonable Cause – Individual and Fiduciary Claim for Refund (which FTB treated as a request for penalty abatement). Appellant stated she had moved out of California in 2017 and was located at a new address in Orlando, Florida (the Orlando address), which she used to submit the requests. FTB denied the requests in a Notice of Determination Not to Abate Interest dated January 21, 2021, but sent it to the Pasadena address.
8. Appellant did not satisfy her balance due, and FTB had to reissue the Notice of Determination Not to Abate Interest on April 6, 2022, which FTB sent to the Orlando address.
9. Appellant filed this timely appeal.

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<sup>2</sup> FTB claims it received appellant's 2016 return via fax on August 8, 2019, but only provided the return received via mail because the mailed return was more legible.

## DISCUSSION

### Issue 1: Whether appellant has shown reasonable cause existed to abate the late filing penalty for the 2016 tax year.

R&TC section 19131 provides that a late filing penalty shall be imposed when a taxpayer fails to file a tax return on or before its due date. Here, it is uncontroverted FTB received appellant's 2016 California income tax return on September 15, 2019, more than two years after the original due date. In her opening brief, appellant argued she filed a timely 2016 California income tax return via mail before she moved to Virginia in 2017; however, appellant has provided no evidence she made a timely filing. Taxpayers attempting to prove that a paper return was timely mailed would have to show evidence, such as a registered or certified mail receipt, that the return was timely mailed and thus, timely filed with FTB. (*Appeal of Fisher*, 2022-OTA-337P.) Thus, FTB's imposition of the penalty is supported by the record and is presumptively correct. (See *Appeal of Xie*, 2018-OTA-076P.)

The late filing penalty may be abated based upon a showing of reasonable cause—that is, by demonstrating that the failure to timely act as required by law occurred despite the exercise of ordinary business care and prudence. (R&TC, §§ 19131(a), 19133.) The standard of proof is by a preponderance of the evidence, which means appellant must show that it is more likely than not reasonable cause existed. (Cal. Code Regs., tit. 18, § 30219(c); *Appeal of Belcher*, 2021-OTA-284P.) Here, appellant has not made such a showing.

Appellant argues that the penalties should be abated because FTB sent notices and correspondences to the wrong address and did not call to notify her it had not received a 2016 tax return. However, these arguments do not relate to circumstances at the time the return was originally due and do not address appellant's failure to file an income tax return by the original due date. Thus, we find appellant's contentions, even if true, unavailing.

Appellant also argues FTB should have called appellant to inform her of the missing income tax return. However, FTB has no such duty under the law. Appellant asserts no other ground for reasonable cause, and OTA also finds no other reason in the record showing reasonable cause existed.

Issue 2: Whether appellant has shown reasonable cause existed to abate the demand penalty for the 2016 tax year.

FTB may impose a penalty for a taxpayer's failure to file a return or to provide information upon FTB's demand to do so unless the taxpayer can show reasonable cause existed to excuse the taxpayer's failure to respond. (R&TC, § 19133.) The demand penalty is designed to penalize the failure of a taxpayer to respond to a request or a demand. (*Appeal of Jones*, 2021-OTA-144P.) Here, it is uncontroverted appellant failed to respond to FTB's Demand by the requisite date, and thus, appellant has the burden to show reasonable cause existed. (*Appeal of Bieneman* (82-SBE-148) 1982 WL 11825.)

To establish reasonable cause, a taxpayer must show that the failure to timely respond to a demand occurred despite the exercise of ordinary business care. (*Appeal of Jones, supra.*) The taxpayer's reason for failing to respond to the Demand must be such that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) Here, appellant has not explained or submitted evidence to establish reasonable cause for failure to respond to the Demand. Although appellant argues FTB did not mail the Demand to the proper address or otherwise contact her, OTA finds FTB properly mailed the Demand to appellant's last known address as required by law. (See R&TC, §§ 19033(a), 19045(a), 18416(b).) R&TC section 18416(c) provides that the last known address shall be the address that appears on the taxpayer's last return filed with FTB, unless FTB has an address it has reason to believe is the most current address for the taxpayer. Here, FTB mailed the Demand to the Pasadena address, which was the address appellant used on her most recently filed income tax return at the time (the 2014 income tax return appellant filed on July 10, 2017). Appellant provided no update despite her purported move to Virginia in May 2017. FTB did not receive notification of an updated address until appellant filed the Request for Interest Abatement on October 9, 2020, and FTB has no record of any other correspondence, from appellant or a third party, received between July 10, 2017, and October 9, 2020, that contained an updated address for appellant. Consequently, the fact that FTB mailed the Demand to appellant's prior address does not constitute reasonable cause. OTA finds no other evidence in the record that shows reasonable cause existed to excuse appellant's failure to respond to the Demand.

Issue 3: Whether appellant has shown entitlement to interest abatement for the 2016 tax year.

Imposing interest is mandatory, and respondent cannot abate interest except where authorized by law. (R&TC, § 19101(a); *Appeal of Balch*, 2018-OTA-159P.) Interest is not a penalty; it is compensation for the use of money. (*Ibid.*) There is no reasonable cause exception to the imposition of interest. (*Appeal of Gorin*, 2020-OTA-018P.) Generally, to obtain relief from interest, taxpayers must qualify under R&TC sections 19104, 19112, or 21012. Appellant makes no separate argument for interest; however, OTA considers appellant's argument that FTB mailed its notices to the wrong address as appellant's argument for interest abatement. Although R&TC section 19104 allows for interest abatement when an unreasonable error or delay occurred because of an FTB employee's ministerial or managerial act, for the reasons set forth above, OTA finds FTB made no such error.

On appeal, FTB acknowledged its error in sending the first Notice of Determination Not To Abate interest dated January 21, 2021, to the wrong address. Consequently, FTB will abate interest from January 21, 2021, to April 6, 2022. Appellant makes no other argument for why she may be entitled to additional interest abatement. Appellant does not allege that any of the other two statutory provisions for interest abatement apply to the facts of this case; and based on the arguments presented and the evidence in the record, OTA concludes that none of these statutory provisions apply. Therefore, appellant did not show that she is entitled to interest abatement.

Issue 4: Whether appellant has shown FTB erred in imposing the filing enforcement fee and the collection cost recovery fee for the 2016 tax year.

R&TC section 19254(a)(2) provides that if a taxpayer fails or refuses to make and file a tax return within 25 days after FTB mails to that person a formal legal demand to file the tax return, FTB will impose a filing enforcement fee. R&TC section 19254(a)(1) requires FTB to impose a collection cost recovery fee when FTB notifies a taxpayer that the continued failure to pay an amount due may result in the imposition of the fee, and the taxpayer fails to timely pay the amount due in response to the notice. There is no reasonable cause defense to the imposition of the fees. (See *Appeal of Auburn Old Town Gallery, LLC*, 2019-OTA-319P; *Appeal of Wright Capital Holdings LLC*, 2019-OTA-219P.)

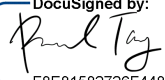
Appellant alleges FTB mailed the Demand and the NPA to the wrong address; however, as stated above, this argument is unavailing. Appellant makes no other allegation FTB improperly imposed the collection cost recovery fee and the filing enforcement fee, and OTA also finds no error in FTB’s imposition of the fees.

HOLDINGS


1. Appellant has not shown reasonable cause existed to abate the late filing penalty for the 2016 tax year.
2. Appellant has not shown reasonable cause existed to abate the demand penalty for the 2016 tax year.
3. Appellant is entitled to interest abatement as conceded by FTB for the 2016 tax year.
4. Appellant has not shown FTB erred in imposing the filing enforcement fee and the collection cost recovery fee for the 2016 tax year.


DISPOSITION

Appellant is entitled to interest abatement for the period between January 21, 2021, to April 6, 2022. FTB’s action is otherwise sustained in full.

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 Richard Tay  
 Administrative Law Judge

We concur:

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 Michael F. Geary  
 Administrative Law Judge

Date Issued: 2/29/2024