

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

In the Matter of the Appeal of: ) OTA Case No. 240315643  
V. GINN AND )  
S. GINN (DEC'D) )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: V. Ginn

For Respondent: AnaMarija Antic-Jezildzic, Program Specialist

L. KATAGIHARA, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, V. Ginn and S. Ginn<sup>1</sup> (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$5,491, a late filing penalty of \$453, and applicable interest for the 2019 tax year.

Appellants waived the right to an oral hearing; therefore, the matter was submitted to the Office of Tax Appeals (OTA) on the written record pursuant to California Code of Regulations, title 18, section 30209(a).

**ISSUE**

Whether appellants have established a basis for abating the tax, penalty, or interest.

**FACTUAL FINDINGS**

1. On October 8, 2021, appellants untimely filed their joint California Resident Income Tax Return (Return) for the 2019 tax year.
2. FTB subsequently received information from the IRS revealing that the adjusted gross income (AGI) appellants reported to FTB was less than the amount they reported to the IRS.
3. FTB therefore issued a Notice of Proposed Assessment (NPA) that increased appellants' AGI to match the amount appellants reported to the IRS. The NPA proposed

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<sup>1</sup> Based on the evidence in the record, S. Ginn passed away between 2020 and 2024.

to assess additional tax of \$5,941 plus interest, and to impose a late filing penalty of \$453.

4. Appellants protested the NPA but did not respond to FTB's subsequent communication.
5. Consequently, FTB issued a Notice of Action affirming the NPA.
6. This timely appeal followed.

### DISCUSSION

Appellants do not dispute that the Return was untimely filed or FTB's calculation of the additional tax, penalty, or interest. Instead, appellants request forgiveness of the tax, penalty, and interest on the basis that S. Ginn started businesses that closed in 2019, which resulted in major losses, and that V. Ginn is now the sole caregiver for appellants' three small children.

However, OTA lacks the authority to forgive a liability or make discretionary adjustments to the amount of a tax assessment based on the taxpayer's ability to pay. (*Appeal of Robinson*, 2018-OTA-059P.) Instead, OTA's jurisdiction, as relevant here, is limited to determining the correct amount of a taxpayer's California income tax liability. (*Ibid.*)

Moreover, appellants bear the burden of proof as to all issues of fact. (Cal. Code Regs., tit. 18, § 30219(a).) Appellants have neither argued nor presented evidence to support an abatement of the late filing penalty or interest.<sup>2</sup> As such, appellants have not demonstrated a basis for abating the tax, penalty, or interest. (See *Appeal of Xie*, 2018-OTA-076P [unsupported assertions are insufficient to satisfy the taxpayer's burden of proof].)

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<sup>2</sup> Abatement of the late filing penalty requires a showing of reasonable cause and lack of willful neglect. (R&TC, § 19131(a).) To obtain interest relief, appellants must qualify under one of the waiver provisions of R&TC section 19104 (pertaining to unreasonable error or delay by FTB in the performance of a ministerial or managerial act), 19112 (pertaining to extreme financial hardship caused by significant disability or other catastrophic circumstance), or 21012 (pertaining to reasonable reliance on the written advice of FTB). OTA does not, however, have jurisdiction to review FTB's interest abatement determination under R&TC section 19112. (*Appeal of Moy*, 2019-OTA-057P.)

HOLDING


Appellants have not established a basis for abating the tax, penalty, or interest.


DISPOSITION

FTB's action is sustained.

Signed by:  
  
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Lauren Katagihara  
Administrative Law Judge

We concur:

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Veronica I. Long  
Administrative Law Judge

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Keith T. Long  
Administrative Law Judge

Date Issued: 2/18/2025