

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

In the Matter of the Appeal of: ) OTA Case No. 240215315  
**P. POWER** )  
 )  
 )  
 )  
 )

---

**OPINION**

Representing the Parties:

For Appellant: P. Power

For Respondent: Leoangelo C. Cristobal, Attorney

For Office of Tax Appeals: Tom Hudson, Attorney

S. ELSOM, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19045, P. Power (appellant) appeals an action by respondent Franchise Tax Board (respondent) proposing tax of \$74,933, a late filing penalty of \$18,733.25, and applicable interest for the 2020 tax year.

Appellant waived the right to an oral hearing, so this 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).

**ISSUES<sup>1</sup>**

1. Whether appellant has established error in respondent’s proposed assessment.
2. Whether the late filing penalty should be abated.
3. Whether appellant is entitled to interest abatement.

---

<sup>1</sup> Appellant’s protest filed with respondent states an amount protested of \$101,084.12, which includes the sum of the following items listed in respondent’s Notice of Proposed Assessment dated July 14, 2023: respondent’s proposed assessment of additional tax of \$74,933, plus the late filing penalty of \$18,733.25, plus interest of \$7,417.87, which equals \$101,084.12. Appellant’s request for appeal states a dollar amount of “all”, which appears to refer to the amounts above, indicating that appellant is intending to appeal the proposed tax assessment, the late filing penalty, and interest.

FACTUAL FINDINGS

1. Appellant did not file a California income tax return for the 2020 tax year.
2. Respondent obtained information indicating that appellant received income sufficient to require him to file a California income tax return. Accordingly, respondent sent a Request for Tax Return (Request) to appellant requesting that he verify whether he had already filed a return, file a return if he had not, or state the reasons why he did not believe he had a filing requirement.
3. Appellant replied to the Request using respondent's form entitled, "Reply to FTB – Questionnaire," stating that in 2020, he had \$0 in interest and dividend income, \$0 of income from the sale of securities, and supported himself in 2020 by "INHERITANCE NON-TAXABLE."
4. Respondent subsequently issued a Notice of Proposed Assessment (NPA) dated July 14, 2023, notifying appellant that respondent received Form 1099 statements reporting appellant received income from the sale of stock of \$739,302 (1099-B), dividend income of \$118 (1099-DIV/PATR), and interest income of \$11 (1099-INT/OID). Based upon this information, respondent's NPA proposed to assess gross income of \$739,431, tax of \$74,933, and a late filing penalty of \$18,733.25, plus applicable interest.
5. Appellant subsequently protested the NPA.
6. On January 3, 2024, respondent issued a Notice of Action to appellant affirming the NPA.
7. This timely appeal followed.
8. On appeal, respondent submits a copy of appellant's 2020 federal Wage and Income Transcript from the IRS dated February 26, 2024, showing income that appellant received in 2020 from "TD Ameritrade Clearing, Inc." from the sale of stocks and interests in various funds/trusts.<sup>2</sup>

---

<sup>2</sup> The IRS Wage and Income Transcript for the 2020 tax year reports that appellant received various proceeds from TD Ameritrade Clearing Inc. The description for these transactions includes the following: "TESLA INC COM", "APPLE INC COM", "MICROSOFT CORP COM", "ABERDEEN STANDARD PALLADIUM TR PHYSCL P", "SPDR S&P500 ETF TRUST TR UNIT ETF", and "ISHARES SLIVER TRUST ISHARES ETF."

## DISCUSSION

### Issue 1: Whether appellant has established error in the proposed assessment.

R&TC section 18501 requires every individual subject to the Personal Income Tax Law to make and file a tax return with respondent “stating specifically the items of the individual’s gross income from all sources and the deductions and credits allowable,” when certain filing thresholds are exceeded. (R&TC, § 18501(a)(1)-(4).) Gross income means all income from whatever source derived, unless specifically excluded. (Internal Revenue Code (IRC), § 61(a); R&TC, § 17071.) If a taxpayer fails to file a return, then respondent “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.” (R&TC, § 19087(a).) Respondent is given “great latitude” in estimating income when a taxpayer fails to file a return or provide the information necessary to ascertain the taxpayer’s tax liability. (*Appeal of Shanahan*, 2024-OTA-039P.) When respondent proposes a tax assessment based on estimated income, respondent’s initial burden is to show that its proposed assessment is reasonable and rational. (*Ibid.*) A proposed assessment based on unreported income is presumed correct when the taxing agency introduces a minimal factual foundation to support the assessment. (*Ibid.*) Once respondent has met this initial burden, the burden then shifts to the taxpayer to prove that the proposed assessment is wrong. (*Ibid.*)

Respondent obtained Form 1099 statements from payers of stock, dividend, and interest income to appellant in 2020, respectively. During this appeal, respondent provided a copy of appellant’s 2020 federal Wage and Income Transcript from the IRS dated February 26, 2024, which further indicates that appellant had unreported income in 2020. Thus, respondent has provided a minimum factual foundation to support its assessment which is presumed to be correct. Respondent’s estimate of appellant’s income based on this information is reasonable and rational, so the burden shifts to appellant to show that the proposed assessment is incorrect.

Appellant states in his protest with respondent that he has been unable to work due to a permanent disability and that he inherited interest income from his deceased parents in 2020, but does not directly refute that he also received income from the sale of stock or dividends. During this appeal, appellant asserts that “[m]y inheritance came from a nontaxable trust fund,” and further states “[w]here’s the proof that I earned any money?” Appellant does not appear to dispute that he received the income items assessed by respondent but instead appears to assert that the income he received is nontaxable.

As stated above, gross income means all income from whatever source derived, unless specifically excluded, and includes gains derived from dealings in property and income received from an interest in a trust (IRC § 61(a)(3), (14); R&TC, § 17071.) The record in this appeal establishes that appellant received income from the sale of stock and the sale of interests in several funds/trusts in 2020. However, appellant has not explained why, nor provided a trust instrument, financial records, or any other information during this appeal to show that the income that he received from the trusts is nontaxable. Appellant has also failed to provide information to establish the adjusted basis in the stock or funds that were sold, or any information that proves he received the stock and/or funds as inheritance from his parents. Appellant has not provided any information to demonstrate that the income he received in 2020 should be specifically excluded from gross income, and as a result, has not met his burden to prove error in respondent's proposed assessment.<sup>3</sup>

Issue 2: Whether the late filing penalty should be abated.

R&TC section 19131(a) imposes a late filing penalty on a taxpayer who fails to file a return by either the original due date or the extended due date unless it is shown that the failure was due to reasonable cause and not due to willful neglect. To establish reasonable cause, the taxpayer must show that the failure to file a timely return occurred despite the exercise of ordinary business care and prudence, or that such cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) The penalty is calculated at five percent of the tax liability for each month or fraction thereof the return is past due, up to a maximum of 25 percent. (R&TC, § 19131(a).)

When FTB imposes a 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 that reasonable cause exists to support an abatement of the penalty. (*Ibid.*) To overcome the presumption of correctness, a taxpayer must provide credible and competent evidence supporting a claim of reasonable cause; otherwise, the penalty cannot be abated. (*Ibid.*) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Bannon*, 2023-OTA-096P.)

---

<sup>3</sup> Respondent states in its opening brief dated April 11, 2024, that it "invites appellant to file a return or submit any evidence that may show error in [respondent's] assessment." However, the record in this appeal does not show appellant responded to respondent's opening brief or provided any information or documentation in response to respondent's request.

Appellant's gross income of \$739,431 exceeded filing thresholds established by California law for the 2020 tax year.<sup>4</sup> Appellant's 2020 return was due May 17, 2021,<sup>5</sup> and an automatic extension of six months was provided from the original due date of April 15, 2021, to October 15, 2021 (R&TC, § 18567; Cal. Code Regs., tit. 18, § 18567.) However, the record in this appeal does not establish that appellant filed a tax return for the 2020 tax year. Therefore, respondent properly imposed the late filing penalty.

Appellant does not dispute respondent's calculation of the late filing penalty and makes no direct argument to contest the imposition of it. Instead, appellant appears to assert that he does not have a California filing requirement under the same argument asserted to establish error in respondent's proposed assessment. This argument is not persuasive for the same reasons stated above. Additionally, while appellant states that he is disabled and has not worked for 20 years, he does not contend that his disability prevented him from timely filing his return for the 2020 tax year. Therefore, appellant has not established reasonable cause to abate the late filing penalty.

Issue 3: Whether appellant is entitled to interest abatement.

Interest must be assessed from the date a tax payment is due through the date that it is paid. (R&TC, § 19101(a).) Imposing interest is mandatory; it is not a penalty, but it is compensation for the 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 interest abatement, a taxpayer must qualify under the waiver provisions of R&TC section 19104 or 21012.<sup>6</sup> R&TC section 19104 provides for interest abatement when the interest is attributable in whole or in part to any unreasonable error or delay by respondent when performing a ministerial or managerial act. R&TC section 21012 provides for interest abatement when a taxpayer reasonably relied on respondent's written advice.

---

<sup>4</sup> For the 2020 tax year, a California resident who is a single individual under the age of 65 with no dependents has a California filing requirement if the individual's California gross income exceeds \$18,496 or the individual's California adjusted gross income exceeds \$14,797.

<sup>5</sup> In response to COVID-19, respondent postponed the due dates, for individuals, for returns and payments to May 17, 2021. (See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-03-state-tax-deadline-for-individuals-postponed-until-may-17-2021.html>.)

<sup>6</sup> R&TC section 19112 also allows respondent to abate interest, but that statute requires a taxpayer to demonstrate extreme financial hardship caused by a significant disability or other catastrophic circumstance. OTA does not have the legal authority to review or reverse respondent's denial of interest abatement based on extreme financial hardship. (See *Appeal of Moy*, *supra*.)


Here, appellant does not argue that any exception to the imposition of interest applies. Appellant does not contend that there was any unreasonable error or delay by respondent. There is no evidence that appellant obtained or reasonably relied on written advice from respondent. Therefore, appellant has not demonstrated any legal grounds for interest abatement.

HOLDINGS


1. Appellant has not established error in respondent’s proposed assessment.
2. The late filing penalty should not be abated.
3. Appellant is not entitled to interest abatement.


DISPOSITION

Respondent’s action is sustained.

Signed by:  
  
C04CD432E3254ED  
 \_\_\_\_\_  
 Seth Elsom  
 Hearing Officer

We concur:

Signed by:  
  
4E8E740EDB984CD  
 \_\_\_\_\_  
 Kim Wilson  
 Hearing Officer

DocuSigned by:  
  
5DD7EE644397430  
 \_\_\_\_\_  
 Steven Kim  
 Administrative Law Judge

Date Issued: 3/4/2025