

2. FTB issued to appellant a Request for Tax Return (Request) for the 2021 tax year that requested that appellant file a return if required or explain that a return was already filed by November 8, 2023.
3. When appellant did not respond to the Request, FTB issued to appellant a Notice of Proposed Assessment (NPA) that proposed an assessment of additional tax, a late filing penalty, and applicable interest. The NPA estimated appellant's taxable income based on the aforementioned Form 1099s.
4. Appellant timely protested the NPA. In the protest, appellant acknowledged a large stock transaction but claimed that he "did not earn any income from this amount." Appellant also claimed that his health began to deteriorate in 2020, and that numerous medical issues led to him becoming disabled and unable to work or earn income. Appellant provided a copy of his 2023 TD-Ameritrade account statement as well as medical documentation.
5. FTB affirmed the NPA by issuing a Notice of Action because FTB did not receive a tax return from appellant. FTB also determined that the documents provided did not substantiate appellant's claim that he lacked a filing requirement for the 2021 tax year.
6. This timely appeal followed.
7. With FTB's opening, FTB submitted an Internal Revenue Service (IRS) Wage and Income Transcript for the 2021 tax year (2021 Transcript) dated July 23, 2024. The 2021 Transcript shows net proceeds (approximately \$130,000) in excess of the filing threshold.

DISCUSSION

Issue 1: Whether appellant has established error in FTB's proposed assessment.

R&TC section 18501 requires every individual subject to the Personal Income Tax Law to make and file a tax return with FTB "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.² (R&TC, § 18501(a)(1)-(4).) Gross income means all income from whatever source derived, unless specifically excluded. (Internal Revenue Code, § 61(a); R&TC, § 17071.) California residents are taxed on their worldwide income, regardless of the source. (R&TC, § 17041(a)(1).)

² For the 2021 tax year, the California resident filing threshold for a single individual is \$19,310.

If a taxpayer fails to file a return, then FTB “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).) FTB 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 FTB proposes a tax assessment based on estimated income, FTB’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 FTB has met this initial burden, the burden then shifts to the taxpayer to prove that the proposed assessment is wrong. (*Ibid.*)

FTB obtained information from Form 1099s for the 2021 tax year that show appellant received income in excess of the filing threshold (the 2021 tax year threshold for a single California resident is \$19,310 compared to net proceeds on the Form 1099s in excess of \$130,000). FTB based the NPA on information contained in the Form 1099s. During this appeal, FTB provided the 2021 Transcript, which supports FTB’s assessment. Accordingly, OTA finds that FTB provided sufficient factual foundation to support its assessment, and thus the burden of proof shifts to appellant to prove that the assessment is incorrect.

Appellant claims that he had no income in 2021, that he is disabled due to his health conditions, and that he has not worked or earned money in the last three years. In support, appellant provided a 2023 TD Ameritrade account statement which shows a zero-account balance and various medical documents.

Although appellant provided documentation for the 2023 tax year, each taxable year stands on its own terms and must be separately considered. (See *U.S. v. Skelly Oil Co.* (1969) 394 U.S. 678, 684; *Pekar v. Commissioner* (1999) 113 T.C. 158, 166.) As such, the 2023 TD-Ameritrade account statement is of little weight, and does not show error in FTB’s proposed assessment for the 2021 tax year. Accordingly, OTA finds that appellant has failed to meet his burden of proof, and no adjustments are warranted.

Issue 2: Whether appellant has established a basis to abate interest.

Interest generally must be assessed from the date a payment is due through the date that it is paid. (R&TC, § 19101.) The imposition of interest is mandatory. (*Ibid.*) Interest is not a penalty; it is compensation for the use of money. (*Appeal of Balch*, 2018-OTA-159P.) Interest accrues on a deficiency assessment regardless of the reason for the assessment. (*Ibid.*) FTB cannot abate interest except where authorized by law. (*Ibid.*) Under R&TC section 19104(a)(1),

FTB may abate interest related to a proposed deficiency to the extent the interest is attributable in whole or in part to: (1) any unreasonable error or delay; (2) by an officer or employee of FTB; (3) in performing a ministerial or managerial act; and (4) which occurred after FTB contacted the taxpayer in writing regarding the proposed assessment, provided no significant aspect of that error or delay is attributable to the taxpayer. (R&TC, § 19104(a)(1), (b)(1).)³

Appellant makes no argument specific to interest relief but reiterates his position that he did not have a filing obligation for the 2021 tax year and that his health condition deteriorated.


Based on appellant’s arguments and the record, OTA finds no basis to relieve interest.

HOLDINGS


1. Appellant has not established error in FTB’s proposed assessment.
2. Appellant has not established a basis to abate interest.


DISPOSITION

FTB’s action is sustained as modified by the December 17, 2024 Memorandum abating the late filing penalty.

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 Josh Aldrich
 Administrative Law Judge

We concur:

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 Kenneth Gast
 Administrative Law Judge

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 Keith T. Long
 Administrative Law Judge

Date Issued: 6/25/2025

³ Interest may also be abated under R&TC sections 19112 and 21012. R&TC section 19112 allows FTB to abate interest when a taxpayer is unable to pay the interest solely because of extreme financial hardship caused by significant disability or other catastrophic circumstance. OTA does not have jurisdiction to review FTB’s denial of interest abatement under R&TC section 19112. (*Appeal of Moy*, 2019-OTA-057P.) R&TC section 21012 allows FTB to abate interest when a taxpayer’s failure to make a timely return or payment is due to the taxpayer’s reasonable reliance on written advice from FTB. R&TC section 21012 is not applicable, because the record does not reflect any reliance on any written advice requested of FTB.