

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 240716774
C. COILA)
)
)
)
)

OPINION

Representing the Parties:

For Appellant: C. Coila
For Respondent: Eric R. Brown, Attorney

E. PARKER, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19045, C. Coila (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$1,760, a late filing penalty of \$440, a notice and demand (demand) penalty of \$794.75, a filing enforcement fee of \$108, and applicable interest for the 2021 tax year.

Appellant 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).

ISSUES

1. Whether appellant has demonstrated error in FTB’s proposed assessment for the 2021 tax year.
2. Whether appellant has shown reasonable cause to abate the late filing and demand penalties.
3. Whether the filing enforcement fee may be abated.
4. Whether appellant is entitled to abatement of interest.

FACTUAL FINDINGS

1. Appellant did not timely file a 2021 California income tax return.
2. FTB obtained information indicating that appellant received income sufficient to prompt a filing requirement for the 2021 tax year but had not filed a return.

3. FTB issued appellant a Demand for Tax Return (Demand) that requested appellant file a return, provide evidence that a return was already filed, or explain why appellant did not have a filing requirement. Appellant did not respond to the Demand.
4. FTB later issued appellant a Notice of Proposed Assessment (NPA) that estimated appellant's income based on reported W-2 wages and 1099-R income, and proposed to assess tax, a late filing penalty, a demand penalty, a filing enforcement fee, and applicable interest.
5. Appellant timely protested the NPA.
6. On June 11, 2024, FTB issued a Notice of Action affirming the NPA.
7. Appellant filed this timely appeal.
8. As relevant here, FTB previously issued appellant an NPA for the 2017 tax year following appellant's failure to respond to a 2017 Demand.
9. On appeal, appellant provides two self-prepared California Forms 3525, Substitute for Form W-2, Wage and Tax Statement, or Form 1099-R, Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc. (Form 3525), which claim zero wages and zero retirement income for the 2021 tax year.

DISCUSSION

Issue 1: Whether appellant has demonstrated error in FTB's proposed assessment for the 2021 tax year.

R&TC section 18501 requires every individual subject to the Personal Income Tax Law to make and file a return with FTB "stating specifically the items of the individual's gross income from all sources and the deductions and credits allowable," if an individual has gross income or adjusted gross income exceeding certain filing thresholds. (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.)

R&TC section 19087(a) provides that if any taxpayer fails to file a return, FTB may, at any time, "make an estimate of the net income, from any available information, and may propose to assess the amount of tax, interest, and penalties due." When a taxpayer fails to file a valid return, FTB's use of income information from various sources to estimate a taxpayer's taxable income is a reasonable and rational method of estimating taxable income. (*Appeal of Sheward*, 2022-OTA-228P.) When FTB makes a proposed assessment of additional tax based on an estimate of income, FTB's initial burden is to show that its proposed assessment is reasonable and rational. (*Appeal of Bindley*, 2019-OTA-179P.) Once FTB satisfies its initial

burden, the proposed assessment of additional tax is presumed correct, and the taxpayer bears the burden of demonstrating error in the assessment. (*Ibid.*) In the absence of credible, competent, and relevant evidence showing error in FTB's determination, the determination must be upheld. (*Ibid.*) The burden of proof requires proof by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(b).)

Here, FTB has shown that its estimate of appellant's taxable income is reasonable and rational as it is based on W-2 wages and 1099-R income reported by appellant's employer and retirement plan administrator. Therefore, appellant bears the burden of demonstrating error in the proposed assessment. On appeal, appellant argues the reported wages and pension distribution do not constitute taxable income. Appellant contends she is not an employee and "had no valid W-4 'voluntary withholding agreement' in place authorizing the reporting of any earnings[,] and the private employer therefore misreported the amounts on the W-2." Appellant also provides self-prepared Forms 3525 purporting to correct appellant's wages and retirement income to zero.¹ Appellant claims she is a "nonresident alien" and a "national" but not a "citizen" under federal law and therefore is a "nontaxpayer." Appellant's arguments are those that have consistently been rejected by OTA and its predecessor, the Board of Equalization, the IRS, and courts as frivolous and without merit. (*Appeal of Balch*, 2018-OTA-159P.) OTA declines to address such frivolous arguments because "to do so might suggest that these arguments have some colorable merit." (*Crain v. Commissioner* (5th Cir. 1984) 737 F.2d 1417.)² Accordingly, appellant has not demonstrated error in FTB's proposed assessment for the 2021 tax year.

Issue 2: Whether appellant has shown reasonable cause to abate the late filing and demand penalties.

If a taxpayer fails to file a return, FTB may propose to assess the amount of penalties due. (R&TC, § 19087(a).) R&TC section 19131(a) imposes a late filing penalty on a taxpayer who fails to file a return by either the due date or the extended due date unless it is shown that the failure to timely file the return was due to reasonable cause and not willful neglect. The late

¹ No evidence in the record indicates that the IRS revised appellant's W-2 and 1099-R income.

² R&TC section 19714 provides that a penalty of up to \$5,000 shall be imposed whenever it appears to OTA that an appeal has been instituted or maintained primarily for delay, or that the taxpayer's position on appeal is frivolous or groundless. (See also Cal. Code Regs., tit. 18, § 30217(a).) Since there is no evidence in OTA's record showing that appellant has a history of filing frivolous arguments in prior appeals, OTA chooses not to impose a frivolous appeal penalty here. (See Cal. Code Regs., tit. 18, § 30217(b).) However, appellant is hereby notified that filing appeals based on frivolous or groundless positions in the future may result in the imposition of a frivolous appeal penalty of up to \$5,000.

filing penalty is calculated at five percent of the tax for each month or fraction thereof that the return is late, with a maximum penalty of 25 percent of the tax.

R&TC section 19133 provides that if a taxpayer fails to make and file a return upon notice and demand by FTB, then FTB may impose a 25 percent demand penalty, unless the taxpayer's failure is due to reasonable cause and not willful neglect. The demand penalty will only be imposed if: (1) the taxpayer fails to timely respond to a current Demand in the manner prescribed; and (2) FTB has proposed an assessment of tax under R&TC section 19087(a) after the taxpayer failed to timely respond to a Request for Tax Return or a Demand in the manner prescribed, for any taxable year that is within the four-taxable year period immediately preceding the taxable year for which the current Demand is issued.³ (Cal. Code Regs., tit. 18, § 19133(b).)

Appellant bears the burden of demonstrating reasonable cause exists to abate these penalties. (*Appeal of Xie*, 2018-OTA-076P.) To establish reasonable cause to abate the late filing penalty, appellant must show that the failure to file a timely return occurred despite the exercise of ordinary business care and prudence. (*Ibid.*) To establish reasonable cause to abate the demand penalty, appellant must show the failure to file a return in response to a demand occurred despite the exercise of ordinary business care and prudence. (*Appeal of Wright Capital Holdings, LLC*, 2019-OTA-219P.) Appellant must provide credible and competent evidence supporting a claim of reasonable cause; otherwise, the penalties cannot be abated. (*Ibid.*)

Appellant failed to timely file a tax return despite receiving W-2 wages and 1099-R income. FTB issued appellant the Demand and appellant failed to timely respond in the prescribed manner. On appeal, appellant provides frivolous arguments, discussed above, that the W-2 wages and 1099-R income are not taxable income. Therefore, appellant has failed to show reasonable cause to abate the late filing and demand penalties.

Issue 3: Whether the filing enforcement fee may be abated.

R&TC section 19254(a)(2) provides that if a person fails or refuses to make and file a tax return within 25 days after formal legal demand to file the tax return is mailed to that person by FTB, FTB shall impose a filing enforcement fee. Once properly imposed, the statute provides no grounds upon which the fee may be abated. (R&TC, § 19254; see *Appeal of Jones*, 2021-OTA-144P.)

³ This requirement is satisfied as FTB previously issued appellant an NPA for the 2017 tax year after appellant did not respond to a Demand for a 2017 tax return.

Here, FTB informed appellant in the 2021 Demand that a filing enforcement fee would be assessed if appellant did not respond to the Demand. Appellant did not respond to the Demand in the prescribed manner. Therefore, FTB properly imposed the filing enforcement fee and OTA has no basis to abate it.

Issue 4: Whether appellant is entitled to abatement of interest.

If any amount of tax is not paid by the due date, interest is required to be imposed from the due date until the date the taxes are paid. (R&TC, § 19101(a).) Interest is not a penalty but is compensation for the taxpayer's use of money that should have been paid to the state. (*Appeal of Moy*, 2019-OTA-057P.) To obtain relief from interest, a taxpayer must qualify under the waiver provisions of R&TC section 19104 (unreasonable error or delay by FTB in the performance of a ministerial or managerial act), 19112 (extreme financial hardship),⁴ or 21012 (reasonable reliance on FTB's written advice).

Appellant does not allege any statutory provision for interest abatement applies to the facts of this case, and OTA concludes based on the evidence in the record that no statutory provision for abatement of interest applies. Therefore, FTB properly imposed interest and OTA has no basis to abate it.

⁴ OTA has no authority to review FTB's denial of a request to waive interest under R&TC section 19112. (*Appeal of Moy, supra.*)

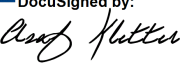
HOLDINGS

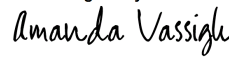
1. Appellant has not demonstrated error in FTB’s proposed assessment for the 2021 tax year.
2. Appellant has not shown reasonable cause to abate the late filing and demand penalties.
3. The filing enforcement fee may not be abated.
4. Appellant is not entitled to abatement of interest.

DISPOSITION

FTB’s action is sustained.

DocuSigned by:
Susana Seyller
 6FE2EBECC6F6481... For
 Erica Parker
 Hearing Officer

We concur:
 DocuSigned by:

 D17AEDDCAAB045B...
 Asaf Kletter
 Administrative Law Judge

DocuSigned by:

 7B17E958B7C14AC...
 Amanda Vassigh
 Administrative Law Judge

Date Issued: 6/3/2025