

) OTA Case No. 241218185
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1. Respondent possessed records indicating that appellant received wages and a distribution from a profit-sharing account (Form 1099-R) totaling over \$100,000 for the 2021 taxable year. These dollar amounts exceeded the 2021 Form 540 filing threshold.
2. Appellant did not file a 2021 Form 540.

3. Respondent sent a notice to appellant requesting that he present a copy of his filed 2021 Form 540, file a 2021 Form 540, or explain why no such return needed to be filed.
When appellant did not comply, respondent sent him a Notice of Proposed Assessment (NPA) imposing tax, penalties, and interest, which appellant protested.
4. Respondent issued a Notice of Action (NOA) denying the protest.

DISCUSSION

Issue 1: Was appellant required to file a 2021 Form 540?

California residents are taxed on their entire taxable income regardless of the source of that income. (R&TC, § 17041(a).) Every individual subject to the Personal Income Tax Law is required to make and file a return with respondent “stating specifically the items of the individual’s gross income from all sources and the deduction and credits allowable” (R&TC, § 18501.) R&TC section 19087(a) provides (in relevant part) that if any taxpayer fails to file a return, or files a false or fraudulent return with intent to evade the tax, for any taxable year, respondent, at any time, may require a return or an amended return under penalties of perjury or may make an estimate of the taxpayer’s net income, from any available information, and may propose to assess the amount of tax, interest, and penalties due.

When respondent makes a proposed assessment of tax based on an estimate of income, respondent’s initial burden is to show why its proposed assessment is reasonable and rational. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509.) An assessment based on unreported income is presumed correct when the taxing agency introduces a minimal factual foundation to support the assessment. (*In re Olshan* (9th Cir. 2004) 356 F.3d 1078, 1084.) Once respondent has met its initial burden, the proposed assessment of tax is presumed correct and the taxpayer has the burden of proving it to be wrong. (*Todd v. McColgan, supra.*) Unsupported assertions are insufficient to satisfy a taxpayer’s burden of proof. (*Appeal of Scanlon*, 2018 OTA 075P.) In the absence of credible, competent, and relevant evidence showing error in respondent’s determination, the determination must be upheld. (*Appeal of Davis and Hunter Davis*, 2020-OTA-182P.)

“Gross income” and “adjusted gross income” are defined by referring to and incorporating into California law Internal Revenue Code (IRC) sections 61 and 62, respectively. (R&TC, §§ 17071, 17072.) Unless otherwise provided, “gross income means all income from whatever source derived,” including compensation for services, interest, dividends, and pensions. (IRC, § 61(a).) Income generally includes any “accessions to wealth.” (*Commissioner v. Glenshaw Glass Co.* (1955) 348 U.S. 426, 431.)

For the 2021 taxable year, single individuals under the age of 65 with no dependents and gross income of at least \$19,310 or adjusted gross income of at least \$15,448, are required to file a Form 540. (R&TC, § 18501(a), (d).) Individual taxpayers filing on a calendar year basis are required to file their Forms 540 on or before April 15th following the close of the calendar year. (R&TC, § 18566.) Here, it is undisputed that the income amounts received by appellant exceeded the filing threshold for 2021.

Based on the appellant's 2021 wage and Form 1099-R information, respondent estimated appellant's income and correctly determined that appellant had a California filing requirement for that taxable year. Because respondent established a minimal factual foundation for its determination, the NPA is presumed correct, and the burden of proof shifts to appellant to show error in respondent's determination.

Appellant argues that the profit-sharing distribution resulted from a county garnishment for child support, but has no explanation for his wages which alone exceed \$50,000. Inasmuch as gross income includes both wages and distributions from a pension plan (even as a result of a county garnishment), appellant's position is not persuasive. Thus, appellant was required to file a 2021 Form 540.

Issue 2: Should the late filing penalty be waived?

A late filing penalty shall be imposed when a taxpayer fails to file a tax return by either the due date or the extended due date, unless the taxpayer establishes that the late filing was due to reasonable cause and not due to willful neglect. (R&TC, § 19131(a).) The late filing penalty is calculated at five percent of the tax, for each month or a fraction thereof, that the return is late, with a maximum penalty of 25 percent of the tax. (*Ibid.*) When respondent imposes a penalty, the law presumes that the penalty was imposed correctly. (Appeal of Xie, 2018-OTA-076P.) The taxpayer bears the burden of proving that reasonable cause exists to support an abatement of the penalty. (*Ibid.*; *Appeal of Wright Capital Holdings LLC*, 2019-OTA-219P.) To establish reasonable cause, the taxpayer must show that the failure to file timely returns 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.) Unsupported assertions are insufficient to satisfy the taxpayer's burden. (*Appeal of Wright Capital Holdings LLC*, *supra*.)

Here, appellant has offered no arguments directly related to the late filing penalty. Other than contending that his profit-sharing distribution was the result of a garnishment for child

support, appellant has offered no evidence that his failure to timely file his 2021 Form 540 was due to reasonable cause. Accordingly, appellant has not established reasonable cause to waive the late-filing penalty.

Issue 3: Should interest be waived?


The imposition of interest is mandatory and accrues on a tax deficiency regardless of the reason for the underpayment. (R&TC, § 19101(a); *Appeal of Balch*, 2018-OTA-159P.) There is no reasonable cause exception to the imposition of interest. (*Appeal of Moy*, 2019-OTA-057P.) To obtain interest relief, appellant must qualify under R&TC sections 19104 (pertaining to unreasonable error or delay by respondent 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 respondent). (*Ibid.*) Appellant has not alleged, and the record does not reflect, that any of these waiver provisions are applicable here. Therefore, there is no basis for waiving interest.

HOLDINGS

1. Appellant was required to file a 2021 Form 540.
2. The late filing penalty should not be waived.
3. Interest should not be waived.

DISPOSITION

Respondent's action is sustained.

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Tommy Leung
Administrative Law Judge

Date Issued: 9/18/2025