

appellant reported on his last return filed with FTB. Appellant did not respond to the Demand.

3. FTB issued to appellant a Notice of Proposed Assessment (NPA) for the 2021 tax year that estimated appellant's income based on wages, interest, dividend, and miscellaneous income reported to FTB by third parties. The NPA proposed to assess tax due and impose a late filing penalty, a demand penalty, a filing enforcement fee, and applicable interest.
4. Appellant filed a timely protest to the NPA that stated he intended to file a 2021 Return within 30 days and that he requested a waiver of the proposed penalties and filing enforcement fee. Appellant did not file a Return during protest.
5. FTB issued a Notice of Action affirming the NPA and stating that appellant still had a requirement to file a 2021 Return.
6. Appellant filed this timely appeal.
7. On appeal, FTB provides a copy of appellant's IRS Wage and Income Transcript dated October 15, 2024, indicating appellant received wages, interest, dividend, miscellaneous, and pass-through income for the 2021 tax year.

DISCUSSION

Issue 1: Whether appellant has established reasonable cause to abate the late filing penalty.

R&TC section 19131 provides that a late filing penalty shall be imposed when a taxpayer fails to file a tax return on or before its due date, unless it is shown that the failure is due to reasonable cause and not due to willful neglect. To establish reasonable cause, a taxpayer must show that the failure to file a timely return occurred despite the exercise of ordinary business care and prudence, or that cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of Shanahan*, 2024-OTA-039P.) For an individual filer, like appellant, the 2021 Return was originally due on April 15, 2022. (R&TC, § 18566.) California provides an automatic six-month extension of time to file a return if the return is filed within six months of the original due date. (R&TC, § 18567.) The burden of proof is on the taxpayer to show that reasonable cause exists to support abatement of the late filing penalty. (*Appeal of Xie*, 2018-OTA-076P.)

Here, appellant has not filed a 2021 Return. On appeal, appellant asserts that he did not receive the initial Demand sent by FTB. Appellant contends that since he did not receive the Demand, he should not be subject to the penalties and fees proposed on the subsequent NPA.

Appellant states that he still intends to file a 2021 Return and requests that the penalties and fees be removed.

FTB imposed the late filing penalty because appellant did not timely file his 2021 Return. On appeal, appellant's only argument appears to be that he did not receive the Demand sent by FTB on February 27, 2024. Appellant provides no explanation or evidence to establish that his failure to file his 2021 Return by the due date occurred despite the exercise of ordinary business care and prudence. Accordingly, appellant has not established grounds to abate the late filing penalty.

Issue 2: Whether appellant has established reasonable cause to abate the demand penalty.

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. 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.² (Cal. Code of Regs., tit. 18, § 19133(b).)

To establish reasonable cause to abate the demand penalty, the taxpayer has the burden of proof to establish that the failure to respond to the Demand in the manner prescribed occurred despite the exercise of ordinary business care and prudence or that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Jones*, 2021-OTA-144P.) Appellant argues reasonable cause exists to abate the demand penalty because he did not receive the Demand.

A notice mailed to a taxpayer shall be sufficient if mailed to the taxpayer's last known address. (R&TC, § 18416(b).) A taxpayer's last known address is the address on the taxpayer's last return filed with FTB, unless the taxpayer has provided clear and concise written or electronic notification of a different address, or FTB has an address it has reason to believe is the most current address for the taxpayer. (R&TC, § 18416(c).) It is well established that notices sent by FTB to a taxpayer's last known address are sufficient, even if not received by the taxpayer. (*Appeal of Goodwin* (97-SBE-003) 1997 WL 258474.)

² This requirement is met in this appeal because FTB issued appellant an NPA for the 2020 tax year after appellant failed to respond to a request to file a 2020 Return.

Here, FTB sent the Demand to appellant's last known address, which is the address appellant reported on his last return filed with FTB. The subsequent NPA that appellant concedes he received was sent to the same address. On appeal, appellant indicates the same address is his current address. Appellant fails to show he exercised ordinary business care and prudence in failing to respond to the Demand sent to his last known address. Appellant provides no other explanation or argument to establish reasonable cause exists to abate the demand penalty.

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, supra.*)

Here, FTB informed appellant in the 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 has established a basis for interest abatement.

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),³ 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.

³ 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 established reasonable cause to abate the late filing penalty.
2. Appellant has not established reasonable cause to abate the demand penalty.
3. The filing enforcement fee may not be abated.
4. Appellant has not established a basis for interest abatement.

DISPOSITION

FTB's action is sustained.

DocuSigned by:

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 Erica Parker
 Hearing Officer

We concur:
 Signed by:

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 Natasha Ralston
 Administrative Law Judge

Signed by:

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 Seth Elsom
 Hearing Officer

Date Issued: 11/13/2025