OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **C. FELKER**	OTA Case No. 240215417

OPINION

Representing the Parties:

For Appellant: C. Felker

For Respondent: Paige Chang, Attorney

S. ELSOM, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19045, C. Felker (appellant) appeals an action by the Franchise Tax Board (respondent) proposing additional tax of $55,620, a late filing penalty of $13,935.50, and applicable interest for the 2019 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 established error in respondent's proposed assessment.
2. Whether appellant has established reasonable cause to abate the late filing penalty.
3. Whether appellant has established a legal basis for the abatement of interest.

FACTUAL FINDINGS

1. As of the date that briefing closed for this appeal, appellant has not filed a California income tax return for the 2019 tax year.
2. On April 18, 2023, respondent sent appellant a Request for Tax return (Request) to appellant's Texas address, informing him that respondent obtained information which indicated that appellant received income from California sources of $580,394 from Worldwide Facilities, Inc. (Worldwide) during the 2019 tax year, but had not filed a California return. The Request required appellant to file, provide evidence that he had

already filed a return or state the reasons why he did not believe he had a filing requirement. Appellant did not respond to the Request.

3. On June 30, 2023, respondent sent appellant a Notice of Proposed Assessment (NPA), proposing to assess additional tax of $55,742 and impose a late filing penalty of $13,935.50, plus applicable interest.
4. Appellant subsequently protested the NPA. Appellant explained that "I am a shareholder in a C[alifornia] S Corp[oration]. However, the tax obligations were handled via filing & payment by the S Corp[oration] on my behalf." Appellant did not include any documentation to support his protest position.
5. Respondent subsequently sent a letter to appellant explaining that individual shareholders of an S corporation are taxed on their share of the S corporation's income and are required to report the income on their individual return if they have a filing requirement, and requesting the information listed in the Request. Appellant provided a letter in response, stating that Worldwide filed a return, paid income tax on his behalf and subsequently deducted that amount through several installments from his paychecks.
6. On January 16, 2024, respondent sent a Notice of Action affirming the NPA.[1]
7. This timely appeal followed. During this appeal, appellant provides a letter stating that an error occurred in the issuance of his Schedule K-1 from "Worldwide Facilities Management Holdings, LP" (Holdings). OTA issued an additional brief request to allow appellant to provide information substantiating the purported error on his California Schedule K-1 from Holdings, supporting law for the tax treatment of the erroneous item, evidence of Holdings' payment of tax on appellant's behalf, and supporting law permitting Holdings to pay tax on appellant's behalf. Appellant did not respond to OTA's request.
8. Additionally, respondent provides an IRS Wage and Income Transcript for the 2019 tax year dated August 14, 2024, which reports that appellant realized a long term capital gain of $558,876 and ordinary income of $20,827 from Worldwide.[2]

[1] Respondent's NPA proposed to assess additional tax of $55,742, which did not include deduction of the personal exemption credit. Respondent's NOA subsequently deducted the personal exemption credit from the amount of tax initially proposed, resulting in additional tax of $55,620.

[2] The IRS Wage and Income Transcript reports total income of $579,703 from "Worldwide Facilities Management Holdings", which appears to be the same entity as in respondent's notices. The amount listed in the Wage and Income Transcript is $691 lower than respondent's Notice of Proposed Assessment, which estimates income of $580,394. Appellant does not dispute this discrepancy, and OTA does not further address it.

DISCUSSION

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

California nonresidents are taxed on income derived from California sources, which include a shareholder's pro rata share of an S corporation's income and a partner's pro rata share of a partnership's income. (R&TC, §§ 17041(b) & (i), 17951(a), 17087.5, 17851; IRC, §§ 1366(a)(1)(A), 702(a).) Every individual taxable under the Personal Income Tax Law is required to file a return with respondent, specifically stating the items of the individual's gross income from all sources and the deductions and credits allowable, if the individual's gross income exceeds certain threshold amounts. (R&TC, § 18501(a).) If a taxpayer fails to file a return, respondent may, at any time, make an estimate of the net income from any available information and propose an assessment of tax, interest, and penalties due. (R&TC, § 19087(a).)

When respondent assesses tax based on an estimate of income, respondent has the initial burden to show that its assessment is reasonable and rational. (*Appeal of Sheward*, 2022-OTA-228P.) An assessment based on unreported income is presumed correct when the taxing agency introduces a minimal factual foundation to support the assessment. (*Ibid*.) To support an assessment based on unreported income, the taxing agency need only introduce some evidence linking the taxpayer with the unreported income. (*Ibid*.) When a taxpayer fails to file a valid return, respondent'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. (*Ibid*.) Once respondent has met its initial burden, the assessment is presumed correct, and the taxpayer has the burden of proving error in the assessment. (*Ibid*.)

Here, respondent based its assessment on the Schedule K-1 issued by Worldwide. Respondent's use of this information to estimate appellant's California taxable income is reasonable and rational, and thus respondent's assessment is presumed to be correct. (*Appeal of Sheward, supra*.) Because OTA finds that respondent has met its initial burden, appellant bears the burden to prove error in respondent's assessment.

Appellant does not dispute the amount or source of the income that respondent used to calculate its tax assessment but instead contends that he has already paid it. In his protest to respondent, appellant states that "I elected to jointly file with [Worldwide], meaning [Worldwide] filed on my behalf and paid the applicable taxes owed. [Worldwide] then deducted that amount from several installments via my normal paycheck." On appeal, appellant further asserts that he discovered an error in the California Schedule K-1 issued for the 2019 tax year by Holdings but

does not explain the nature of the error or Holdings' relationship to Worldwide. Appellant states that "I will be providing additional information" but provided no additional information on appeal.

As stated above, appellant bears the burden to prove error in respondent's assessment. (*Appeal of Sheward, supra*.) California nonresidents are taxed on income derived from California sources, which include a shareholder's pro rata share of an S corporation's income and a partner's pro rata share of a partnership's income. (R&TC, §§ 17041(b) & (i), 17951(a), 17087.5, 17851; IRC, §§ 1366(a)(1)(A), 702(a).) Every individual taxable under the Personal Income Tax Law is required to file a return with respondent, specifically stating the items of the individual's gross income from all sources and the deductions and credits allowable, if the individual's gross income exceeds certain threshold amounts. (R&TC, § 18501(a).) Appellant provides no evidence, such as a tax return, bank statements, or any other information which proves that Worldwide (or Holdings) paid tax on appellant's behalf. Further, appellant does not explain the Schedule K-1 reporting error or provide an amended Schedule K-1, correspondence with a tax preparer, or any other information to show that a reporting error occurred, as appellant asserts on appeal. For the foregoing reasons, appellant has not met his burden of proof to establish error in respondent's proposed assessment.

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

FTB 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 was due to reasonable cause and not willful neglect. (R&TC, § 19131.) The late filing penalty is calculated at 5 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. (*Ibid.*)

When FTB imposes a penalty, there is a rebuttable presumption that the penalty was properly imposed. (*Appeal of Xie*, 2018-OTA-076P.) The burden of proof is on the taxpayer to show that reasonable cause exists to support abatement of the late filing penalty. (*Ibid*.) To overcome the presumption of correctness that attaches to the penalty, a taxpayer must provide credible and competent evidence supporting a claim of reasonable cause, otherwise, the penalty, cannot be abated. (*Ibid*.) 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 ordinary intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of Head and Feliciano*, 2020-OTA-127P.)

Here, appellant does not dispute the imposition or calculation of the late filing penalty or assert reasonable cause to abate the penalty. Instead, appellant generally asserts that World-wide filed a return on appellant's behalf for the 2019 tax year, which is addressed above. As of the date briefing closed for this appeal, appellant has not filed a California income tax return. Appellant has failed to establish that he filed a return late despite the exercise of ordinary business care and prudence. Thus, appellant has not established reasonable cause to abate the late filing penalty.

Issue 3: Whether appellant has established a legal basis for the abatement of interest.

Interest must be assessed from the date a tax payment is due through the date that it is paid. (R&TC, § 19101(a).) The imposition of interest is mandatory; it is not a penalty, but it is compensation for a 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.[3] 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 the taxpayer reasonably relied on respondent's written advice.

Here, appellant does not argue that any statutory exception to the imposition of interest applies, and no evidence indicates that any statutory exception applies. Therefore, appellant has not demonstrated any legal grounds for interest abatement.

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

HOLDINGS

1. Appellant has not established error in respondent's proposed assessment.
2. Appellant has not established reasonable cause to abate the late filing penalty.
3. Appellant has not established a legal basis for the abatement of interest.

DISPOSITION

Respondent's action is sustained.

Signed by:
Seth Elsom
C04CD432E3254ED...
Seth Elsom
Hearing Officer

We concur:

Signed by:
Natasha Ralston
25E8EE08EE56478...
Natasha Ralston
Administrative Law Judge

DocuSigned by:
Asaf Kletter
D17AEDDCAAB045B...
Asaf Kletter
Administrative Law Judge

Date Issued: 10/16/2025