

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 240716904
G. DOLOFAN)
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OPINION

Representing the Parties:

For Appellant: G. Dolofan

For Respondent: Leoangelo C. Cristobal, Attorney

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, G. Dolofan (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$2,621, a late-filing penalty of \$655.25, a penalty of \$655.25 for failure to file a return after notice and demand (demand penalty), a filing enforcement fee of \$108, and applicable interest for the 2021 taxable 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. Is appellant required to file a California tax return for taxable year 2021, and if so, has appellant established error in FTB’s proposed assessment?
2. Has appellant established reasonable cause to abate the late-filing penalty?
3. Has appellant established reasonable cause to abate the demand penalty?
4. Was the filing enforcement fee properly imposed?
5. Has appellant established a basis to abate or waive interest?

FACTUAL FINDINGS

1. FTB received information from Old Republic Title Company that appellant was paid net proceeds of \$66,650 from the sale of California real estate in 2021.

2. Appellant's federal Wage and Income Transcript includes a Form 1099-S, Proceeds from Real Estate Transactions, reporting that appellant received gross proceeds of \$215,000 from the sale of property in Georgetown, California.
3. Based on that information, FTB sent appellant a Demand for Tax Return (Demand) to appellant's Florida residence stating that FTB believes appellant may have a California filing requirement. The Demand instructed appellant to send a copy of a 2021 tax return if it was already filed, file a tax return, or complete a questionnaire to determine if appellant had a filing requirement.
4. When appellant did not respond to the Demand, FTB issued a Notice of Proposed Assessment (NPA) for the 2021 taxable year proposing to assess tax of \$2,621, a late-filing penalty of \$655.25, a demand penalty of \$655.25, plus interest and a filing enforcement fee of \$108.
5. Appellant protested the 2021 NPA with FTB and attached a copy of the first two pages of appellant's federal tax return with a home address in Florida.
6. FTB issued a Notice of Action affirming the NPA because appellant neither filed a California tax return nor provided documentation substantiating that he was not required to file.
7. FTB previously issued a Request for Tax Return (request) for taxable year 2017 and, when appellant did not file a California tax return, FTB issued an NPA for 2017.
8. Appellant filed this timely appeal.

DISCUSSION

Issue 1: Is appellant required to file a California tax return for taxable year 2021, and if so, has appellant established error in FTB's proposed assessment?

Under the Personal Income Tax Law, California resident individuals are taxed on their entire taxable income regardless of source, while nonresidents, such as appellant, are only taxed on income derived from California sources. (R&TC, §§ 17041(a), (b), & (i)(1), 17951.) Income from real property located in California is considered California source income. (Cal. Code Regs., tit. 18, §17951-2.) If a taxpayer fails to file a return, FTB 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).) For 2021, an individual with a single filing status who was under the age of 65 with no dependents, a California filing requirement is triggered if the individual's California gross income was at least \$19,310. (R&TC, § 18501(a).)

When FTB assesses tax based on an estimate of income, FTB 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.*) Once FTB has met its initial burden, the assessment is presumed correct, and the taxpayer has the burden of proving error in the assessment. (*Ibid.*)

Appellant states that he lives and works in Florida and has paid taxes there for 35 years. Appellant asserts that he sold the California property in 2021 but had no profit. Appellant therefore believes that he does not need to file a California tax return.

The evidence FTB submits shows that a title company paid appellant net proceeds of \$66,650 after the sale of the California real property for \$215,000. Because appellant's real property was located in California, any income from the property, including the sale here, is considered California source income. (Cal. Code Regs., tit. 18, §17951-2.) FTB determined that appellant received \$66,650 from the sale, which exceeds the 2021 threshold of \$19,310 for filing a California tax return.¹ FTB used that information as the basis for its estimate of appellant's income. Therefore, FTB has met its initial burden of introducing a minimal factual foundation to support the proposed assessment. Thus, the burden of proof shifts to appellant to prove that the proposed assessment is inaccurate.

Here, appellant apparently provided just the first two pages of his federal tax return to FTB. Appellant did not include any information about the basis and costs of sale of the property, nor did appellant include a federal Schedule D which would show how appellant reported the sale to the IRS. On page 1 of the federal return, appellant reports capital gain that exceeds the \$66,650 payment reported by the title company. Appellant may or may not have profited from the sale of the California real property, but without providing substantiating evidence, appellant fails to show error in FTB's proposed assessment.² (See *Appeal of Bindley*, 2019-OTA-179P [a taxpayer's failure to produce evidence that is within his control gives rise to a presumption that such evidence is unfavorable to his case].)

Appellant's unsupported assertion that he had no profit (or gain) from the sale of the California real property is insufficient to carry his burden of proof. (*Appeal of Johnson*, 2022-OTA-166P.) Consequently, appellant was required to file a California tax return for 2021.

¹ Appellant's federal Wage and Income Transcript includes a Form 1099-S, Proceeds From Real Estate Transactions, that reports gross proceeds of \$215,000.

² If appellant were to file with a tax return and provide supporting documentation, FTB may reconsider appellant's assertions.

Also, without the evidence discussed above, appellant has not met his burden to prove error in FTB's proposed assessment.

Issue 2: Has appellant 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 the taxpayer establishes that the late filing was due to reasonable cause and was not due to willful neglect. The standard of reasonable cause requires the taxpayer to establish that the failure to timely file occurred despite the exercise of ordinary business care and prudence. (*Appeal of Jones*, 2021-OTA-144P.) The taxpayer carries the burden of establishing that reasonable cause exists to abate the penalty. (*Ibid.*)

Appellant asserts only that he lives and works in Florida and that he did not profit from the sale of California real property. While appellant was invited to do so, in the Demand and in FTB's opening brief, appellant still did not submit either a tax return or documentation showing there was no gain from the sale of California real property. Since appellant did not act reasonably and prudently, he has not established reasonable cause to abate the late-filing penalty.

Issue 3: Has appellant established reasonable cause to abate the demand penalty?

If a taxpayer fails or refuses to file a tax return or provide information upon notice and demand by FTB, then, unless the failure is due to reasonable cause and not willful neglect, FTB may add a penalty of 25 percent of any deficiency tax assessed by FTB. (R&TC, § 19133.) For individual taxpayers, the demand penalty will only be imposed if: (1) the taxpayer fails to timely respond to a current demand, 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 or demand, for any taxable year that is within the four-taxable-year period immediately preceding the taxable year for which the current demand is issued. (Cal. Code of Regs., tit. 18, § 19133(b).)

A properly imposed demand penalty may be abated if a taxpayer can establish reasonable cause to abate the penalty. To establish reasonable cause to abate the demand penalty, a 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 Shanahan*, 2024-OTA-039P.)

Here, FTB previously sent appellant a request and subsequently issued an NPA estimating appellant's 2017 income and proposing tax. The 2017 taxable year is within the

four-taxable-year period preceding 2021, and the demand penalty was properly imposed. Appellant makes no specific arguments with respect to the penalty; he only makes the statements discussed above, that he lives and works in Florida and did not profit from the sale of California real property. As OTA concluded above in the context of the late-filing penalty, those unsupported statements do not show reasonable cause to abate the demand penalty.

Issue 4: Was the filing enforcement fee properly imposed?

FTB shall impose a filing enforcement fee if a taxpayer fails or refuses to file the required tax return within 25 days after FTB mails a formal legal demand to file the tax return. (R&TC, § 19254(a)(2).) Once properly imposed, the statute provides no grounds, including reasonable cause, upon which the fee may be abated. (R&TC, § 19254; *Appeal of Shanahan, supra*.) Therefore, OTA's inquiry is limited to whether FTB complied with the statutory notice requirements for imposing the filing enforcement fee.

Here, FTB issued appellant a Demand for the 2021 taxable year notifying him that it would impose a filing enforcement fee if he failed to respond to the Demand by November 1, 2023. FTB properly imposed the fee after appellant, who has a 2021 tax return filing requirement, did not file a tax return or otherwise respond to the Demand. Since the fee was properly imposed, OTA has no authority to abate the filing enforcement fee.

Issue 5: Has appellant established a basis to waive or abate interest?

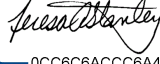
If any amount of the tax is not paid by the due date for the return, interest is required to be imposed from the payment due date until the date the taxes are paid. (R&TC, § 19101(a).) Interest is not a penalty but is compensation for the taxpayer's use of money which should have been paid to the state. (*Appeal of Balch, 2018-OTA-159P.*) Imposition of interest is mandatory, and it can only be abated in certain limited situations when authorized by law. (R&TC, § 19101(a); *Appeal of Balch, supra*.) There is no reasonable cause exception to the imposition of interest. To obtain relief from interest, appellant must qualify under R&TC section 19104, 19112, or 21012; however, based on the evidence and appellant's arguments, none of these statutory provisions apply. Thus, appellant has not established any basis to waive or abate interest.

HOLDINGS

1. Appellant is required to file a California tax return for taxable year 2021, and appellant has not established error in FTB’s proposed assessment.
2. Appellant has not established reasonable cause to abate the late-filing penalty.
3. Appellant has not established reasonable cause to abate the demand penalty.
4. The filing enforcement fee was properly imposed.
5. Appellant has not established a basis to abate or waive interest.


DISPOSITION

OTA sustains FTB’s action.

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 Teresa A. Stanley
 Administrative Law Judge

We concur:

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 Michael F. Geary
 Administrative Law Judge

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 Steven Kim
 Administrative Law Judge

Date Issued: 11/3/2025