

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
**P. ROGERS (DEC'D)** ) OTA Case No. 241218216  
 )  
 )  
 )  
 )  
 )

---

**OPINION**

Representing the Parties:

For Appellant: Carlos Rogers, Representative

For Respondent: Amelia W. Breen, Attorney

H. FAMULARO, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, P. Rogers (dec'd) (appellant) appeals an action by the Franchise Tax Board (respondent) proposing tax of \$6,646, a late-filing penalty of \$1,661.50, a demand penalty of \$2,595.75, a filing enforcement fee of \$121, 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 established error in respondent's proposed assessment of tax.
2. Whether appellant has established reasonable cause to abate the late-filing penalty.
3. Whether appellant has established reasonable cause to abate the demand penalty.
4. Whether appellant has established a legal basis to abate the filing enforcement fee.
5. Whether appellant has established a legal basis to abate interest.

**FACTUAL FINDINGS**

1. Appellant did not file a 2021 California resident income tax return.
2. Appellant passed away on November 7, 2023.

3. Respondent obtained information indicating that appellant received sufficient income to require appellant to file a 2021 tax return.<sup>1</sup> Respondent determined appellant received taxable pension income, retirement plan distributions, non-employee compensation, dividend distributions, and interest income, as reported on various third-party information returns for the 2021 tax year. Respondent also determined appellant received estimated business income based on the amount of gross sales appellant reported on her 2021 California sales tax return.<sup>2</sup>
4. On June 11, 2024, respondent sent a Demand for Tax Return (Demand) to appellant that required information to determine whether appellant had a 2021 filing requirement or required appellant to file a 2021 tax return by July 17, 2024. Respondent informed appellant in the Demand that appellant may be subject to the filing enforcement fee if appellant did not file her tax return for the 2021 tax year by July 17, 2024. No one on appellant's behalf responded to the Demand.
5. On August 9, 2024, respondent issued a Notice of Proposed Assessment (NPA) to appellant that estimated her income and allowed a standard deduction, two exemption credits, and California tax withheld as reported to respondent for appellant's 2021 tax year. Based on this computation, the NPA proposed additional tax of \$6,646, a late-filing penalty of \$1,661.50, a demand penalty of \$2,595.75, a filing enforcement fee of \$121, and applicable interest for the 2021 tax year.
6. On September 15, 2024, appellant's representative filed a protest in response to the NPA that enclosed a copy of appellant's death certificate providing appellant died of a terminal disease. Appellant's representative did not dispute appellant's receipt of income as determined in respondent's NPA but instead argued the proposed assessment amount would be significantly reduced because of deductions not contained in respondent's computation of proposed assessment. Appellant's representative claimed appellant's health condition prior to her death delayed the preparation of appellant's 2021 tax return but that it would be completed by the end of 2024.
7. On November 6, 2024, respondent issued a Notice of Action affirming the NPA.

---

<sup>1</sup> A California resident who is a single individual 65 years old or older with no dependents, such as appellant, has a California filing requirement for the 2021 tax year if the individual's California gross income exceeds \$25,760 or the individual's California adjusted gross income exceeds \$21,898. Appellant's 2021 tax return was due on April 15, 2022, and on October 15, 2022, with the six-month automatic extension. (R&TC, §§ 18566, 18567; Cal. Code Regs., tit. 18, § 18567.)

<sup>2</sup> The California Department of Taxation and Fee Administration reported that appellant held an active sales permit during the 2021 tax year.

8. By letter dated November 29, 2024, appellant's representative apprised respondent that he was "actively" working on completing appellant's 2021 tax return, and that appellant's mailing address was still valid but not monitored regularly. Appellant's representative also notified respondent of appellant's change of address.
9. Appellant's representative concurrently filed this timely appeal.

### DISCUSSION

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

R&TC section 18501 requires every individual subject to the Personal Income Tax Law to make and file a return with respondent, stating specifically the items of the individual's gross income from all sources and the deductions and credits allowable, when certain filing thresholds are exceeded. (R&TC, § 18501(a)(1)-(4).) If a taxpayer fails to file a return, then respondent, at any time, may make an estimate of the net income, from any available information, and may propose to assess the amount of tax, interest, and penalties due. (R&TC, § 19087(a).) Respondent is given "great latitude" in estimating income when a taxpayer fails to file a return or provide the information necessary to ascertain the taxpayer's tax liability. (*Appeal of Shanahan*, 2024-OTA-039P.) When respondent proposes a tax assessment based on an estimate of income, then respondent's initial burden is to show that its proposed assessment is reasonable and rational. (*Appeal of Bindley*, 2019-OTA-179P.) An assessment based on unreported income is presumed correct when the taxing agency introduces a minimal factual foundation to support the assessment. (*Ibid.*)

During the 2021 tax year, appellant received income from various sources, held an active seller's permit, and reported gross sales on her 2021 California sales tax return. Respondent properly estimated that appellant's income exceeded the 2021 filing threshold for a single individual 65 years old or older with no dependents. Appellant does not dispute the receipt of income as determined in respondent's NPA. Instead, appellant argues the amount of respondent's proposed tax assessment should be significantly reduced and might result in a refund because of deductions, including health care and other costs, not included in respondent's computation of proposed assessment for the 2021 tax year.

Appellant has not filed appellant's 2021 tax return or provided corroborating evidence establishing that appellant had deductions or costs more than the standard deduction included in the computation of proposed assessment. While appellant's representative contends he is "actively" working on completing appellant's 2021 tax return, a return has nevertheless not been

filed. Therefore, OTA finds appellant has not established error in respondent's proposed assessment of tax.

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

California imposes a penalty for the failure to file a return on or before the due date, unless it is shown that the failure is due to reasonable cause and not due to willful neglect. (R&TC, § 19131.) 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 GEF Operating, Inc.*, 2020-OTA-057P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid.*) Illness or other personal difficulties may be considered reasonable cause if a taxpayer presents credible and competent proof that the taxpayer was continuously prevented from filing a tax return. (*Appeal of Belcher*, 2021-OTA-284P.) When a taxpayer alleges reasonable cause based on an incapacity due to illness, the duration of the incapacity must approximate that of the tax obligation deadline. (*Ibid.*) However, if the difficulties simply caused the taxpayer to sacrifice the timeliness of one aspect of the taxpayer's affairs to pursue other aspects, the taxpayer must bear the consequences of that choice. (*Ibid.*)

Here, appellant does not dispute that the late-filing penalty for the 2021 tax year was properly imposed or computed. Rather, appellant asserts there is reasonable cause to abate the penalty. Appellant argues her severe illness prior to her death and the difficulty in determining deductible medical expenses and other costs has delayed the preparation of appellant's 2021 tax return. Appellant also appears to argue that respondent's failure to update appellant's mailing address exacerbated that delay. While appellant's death certificate indicates she died from a terminal disease, appellant has not provided any evidence establishing when appellant's condition was diagnosed. Nor has appellant satisfied her burden of establishing that she was continuously prevented from filing her 2021 tax return during the approximate duration of the tax obligation deadline, which for the 2021 tax year is principally the six-month extension period from the tax filing due date of April 15, 2022, through October 15, 2022. (See *Appeal of Belcher*, *supra*.) Furthermore, appellant's apparent claim that respondent's failure to update appellant's mailing address exacerbated the delay in preparing appellant's 2021 tax return is unsupported by the record. Appellant acknowledged that her mailing address was valid as of November 29, 2024, and did not notify respondent of her change of address until that date.

Appellant offers no evidence of reasonable cause to abate the penalty. Therefore, appellant has not shown that the failure to timely file appellant's 2021 tax return was due to reasonable cause and not due to willful neglect.

Issue 3: Whether appellant has established reasonable cause to abate the demand penalty.

If any taxpayer fails or refuses to furnish any information requested in writing by respondent or to make and file a return upon notice and demand by respondent, then, unless the failure is due to reasonable cause, respondent may add a penalty of 25 percent of the amount of any tax assessment pertaining to the assessment of which the information or return was required. (R&TC, § 19133.) To establish reasonable cause, a taxpayer's failure to respond to a Demand must be such that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of GEF Operating, Inc., supra.*)

Appellant appears to argue there is reasonable cause to abate the demand penalty based on the same grounds as her request to abate the late-filing penalty, as discussed above. Respondent determined that appellant had a 2021 filing requirement, and appellant was given a due date of July 17, 2024, to file appellant's 2021 tax return to avoid the imposition of the demand penalty. Appellant did not respond to the Demand. Appellant has not provided any evidence demonstrating reasonable cause for failing to respond by the due date. Therefore, there is no basis to abate the demand penalty.

Issue 4: Whether appellant has established a legal basis to abate the filing enforcement fee.

R&TC section 19254(a)(2) provides that, if respondent mails a formal legal demand for a tax return to a taxpayer, a filing enforcement cost recovery fee is required to be imposed when the taxpayer fails or refuses to file the return within the prescribed period. Once properly imposed, there is no provision in the R&TC which would excuse respondent from imposing the filing enforcement cost recovery fee for any circumstances, including reasonable cause. (R&TC, § 19254(a)(2); *Appeal of GEF Operating, Inc., supra.*)

Respondent informed appellant in the Demand that appellant may be subject to the filing enforcement fee if appellant did not file her tax return for the 2021 tax year by July 17, 2024. Respondent did not receive appellant's return within the prescribed period. Therefore, respondent properly imposed the filing enforcement fee, and there is no basis to abate this fee.

Issue 5: Whether appellant has established a legal basis to abate interest.

If any amount of the 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 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. (*Ibid.*; R&TC, § 19101(a).) There is no reasonable cause exception to the imposition of interest. (*Appeal of Moy*, 2019-OTA-057P.)


To obtain relief from interest, appellant must qualify under R&TC section 19104, 19112, or 21012. Pursuant to R&TC section 19104, respondent is authorized to abate or refund interest if there has been an unreasonable error or delay in the performance of a ministerial or managerial act by an employee of respondent. Appellant's allegation that respondent failed to update her current mailing address in its systems appears to be an assertion of such an unreasonable error and delay. However, as discussed above, there is no support in the record for this apparent claim because appellant acknowledged that her mailing address was valid. Relief pursuant to R&TC section 19112 is not relevant here because appellant does not allege extreme financial hardship caused by significant disability or other catastrophic circumstance, which OTA does not have authority to review. (*Appeal of Moy, supra.*) Relief pursuant to R&TC section 21012 is also not relevant here because respondent did not provide appellant with any written advice. Accordingly, based on the evidence and appellant's arguments, none of these statutory provisions apply. Thus, appellant has not established any basis for interest abatement for the 2021 tax year.


HOLDINGS

1. Appellant has not established error in respondent's proposed assessment of tax.
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. Appellant has not established a legal basis to abate the filing enforcement fee.
5. Appellant has not established a legal basis to abate interest.

DISPOSITION

Respondent's action is sustained.

Signed by:  
  
 E407D7E70D3E41C...  
 \_\_\_\_\_  
 Hans Famularo  
 Administrative Law Judge

We concur:  
 DocuSigned by:  
  
 67F043D83EF547C...  
 \_\_\_\_\_  
 Sheriene Anne Ridenour  
 Administrative Law Judge

DocuSigned by:  
  
 1A9B52EF88AC4C7...  
 \_\_\_\_\_  
 Michael F. Geary  
 Administrative Law Judge

Date Issued: 12/3/2025