

- receipts, nonemployee compensation, capital gains, dividend distributions, and interest income sufficient to require him to file a 2021 California income tax return.¹
2. On May 28, 2024, respondent sent a Demand for Tax Return (Demand) to appellant that required information to determine appellant's 2021 filing requirement or a 2021 tax return to be filed by July 3, 2024. Appellant did not respond to the Demand.
 3. On August 9, 2024, respondent issued a Notice of Proposed Assessment (NPA) to appellant with a computation of the proposed assessment comprised of estimated income as reported on various third-party information returns, the standard deduction for a single individual under 65 years of age with no dependents, and California tax withheld as reported to respondent for appellant's 2021 tax year. Based on this computation, the NPA proposed tax of \$93,641, a late-filing penalty of \$23,410.25, a demand penalty of \$26,065, a filing enforcement fee of \$121, and applicable interest for the 2021 tax year.
 4. On October 7, 2024, appellant filed a protest in response to the NPA, in which appellant contended: (1) respondent's estimated income is incorrect because certain items of income included in respondent's proposed assessment are either non-taxable, excludable from gross income, or incorrectly calculated; (2) appellant is entitled to deductions, credits, and payments not accounted for in its proposed assessment of tax; (3) the late-filing and demand penalties are incorrectly calculated, not owed because appellant has no tax liability for the 2021 tax year, or there is reasonable cause to abate these penalties; and (4) interest is not owed because appellant has no tax liability for the 2021 tax year.
 5. On November 5, 2024, respondent issued a Notice of Action (NOA) affirming the NPA.
 6. Appellant then filed this timely appeal, in which appellant states he disagrees with respondent's proposed assessment of tax as provided in the NOA because "[t]he correct amount of taxable income is reflected on [his] form 540 for TY 2021."

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

¹ A California resident who is a single individual under 65 years old with no dependents, such as appellant, has a California filing requirement for the 2021 tax year if the individual's California gross income exceeds \$19,310 or the individual's California adjusted gross income exceeds \$15,448.

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.*) Unsupported assertions are insufficient to satisfy a taxpayer’s burden of proof. (*Appeal of Mazer*, 2020-OTA-263P.) In the absence of credible, competent, and relevant evidence showing that respondent’s proposed assessment is incorrect, it must be sustained. (*Appeal of Bracamonte*, 2021-OTA-156P.)

During the 2021 tax year, respondent obtained information that appellant received income from various sources as reported on third-party information returns. Respondent properly estimated that appellant’s income exceeded the 2021 filing threshold for a single individual under 65 years old with no dependents. Appellant does not dispute receipt of the estimated income as determined in respondent’s NPA. Instead, appellant argues “[t]he correct amount of taxable income is reflected on [his] form 540 for TY 2021.” However, respondent’s records do not reflect that appellant filed his 2021 tax return.

Appellant further argues respondent’s estimated income is incorrect because certain items of income included in respondent’s proposed assessment are either non-taxable, excludable from gross income, or incorrectly calculated. In addition, appellant argues he is entitled to deductions, credits, or payments not accounted for in respondent’s computation of proposed assessment for the 2021 tax year. Appellant has not provided any evidence establishing the income items at issue are either non-taxable, excludable from income, or incorrectly calculated in respondent’s computation of proposed assessment. Nor has appellant provided any evidence that he has deductions, credits, or payments not included in the computation of proposed assessment. Accordingly, appellant has not met his burden to demonstrate 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.*)

Appellant asserts that the late-filing penalty is incorrectly calculated, not owed because appellant has no tax liability for the 2021 tax year, or there is reasonable cause to abate this penalty. Appellant offers no evidence to support these contentions. Therefore, appellant has not met his burden of showing that the failure to timely file his 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 Jones*, 2021-OTA-144P.)

On May 28, 2024, respondent sent a Demand to appellant that determined appellant had a 2021 filing requirement and that provided appellant until July 3, 2024, to file his 2021 tax return to avoid the imposition of the demand penalty. Appellant did not respond to the Demand. Appellant argues, without proof, that the demand penalty is not owed because it is incorrectly calculated, appellant has no tax liability for the 2021 tax year, or there is reasonable cause to abate this penalty. Respondent properly calculated the penalty amount of 25 percent of the proposed tax assessment, before applying any payments or credits. (*Appeal of Jones, supra.*) As discussed above, appellant has not met his burden to demonstrate error in respondent's proposed assessment of tax and, therefore, was required to file a 2021 tax return. Appellant has not provided any evidence demonstrating reasonable cause for failing to respond within the prescribed period. 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 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 fee for any circumstances, including reasonable cause. (R&TC, § 19254(a)(2); *Appeal of Jones, supra.*)

Respondent informed appellant in the Demand that appellant may be subject to the filing enforcement fee if he did not file his 2021 tax return. Appellant did not respond to the Demand and does not dispute the application of the filing enforcement fee. 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. (R&TC, § 19101(a); *Appeal of Balch, supra.*) 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; however, based on the evidence and appellant's arguments, none of these statutory provisions apply.² (See *ibid.*) Thus, appellant has not established any basis for interest abatement for the 2021 tax year.


² 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. Here, appellant does not assert any such errors or delays occurred. 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. Relief pursuant to R&TC section 21012 is also not relevant here because respondent did not provide appellant with any written advice.

HOLDINGS

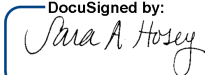
1. Appellant has not established error in respondent's proposed assessment of tax.
2. Appellant has not established reasonable cause to abate the late-filing penalty.
3. Appellant has not established reasonable cause to abate the demand penalty.
4. Appellant has not established a legal basis to abate 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:

 6D3FE4A0CA514E7...

 Sara A. Hosey
 Administrative Law Judge

Signed by:

 CB1F7DA37831416...

 Josh Lambert
 Administrative Law Judge

Date Issued: 12/4/2025