

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
S. HANSEN) OTA Case No. 240917454
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OPINION

Representing the Parties:

For Appellant: S. Hansen
For Respondent: Jeffrey Gates, Attorney
For Office of Tax Appeals: Namrita Randhawa, Program Specialist III

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, S. Hansen (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$11,541, a \$2,885.25 late filing penalty, a notice and demand (demand) penalty of \$3,267.50, a \$108 filing enforcement cost recovery fee (filing enforcement fee), 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 FTB’s proposed assessment.
2. Whether appellant has established a basis to abate the late filing penalty.
3. Whether appellant has established a basis to abate the demand penalty.
4. Whether appellant has shown that the filing enforcement fee should be abated.
5. Whether appellant has established a legal basis to abate interest.

FACTUAL FINDINGS

1. As of the date briefing closed for this appeal, appellant has not filed a California income tax return for the 2021 tax year. FTB received information indicating that appellant received sufficient income to have a filing requirement.¹
2. On February 6, 2024, FTB issued a Demand for Tax Return (Demand) to appellant. The Demand required that by March 13, 2024, appellant file or provide evidence that she already filed her 2021 California income tax return, or respond with a completed questionnaire showing that she had no filing requirement for the 2021 tax year. The Demand notified appellant that if she did not timely respond to the Demand in the prescribed manner, FTB would assess a demand penalty, a late filing penalty, a filing enforcement fee, and interest.
3. Appellant did not timely respond to the Demand, and FTB issued appellant a Notice of Proposed Assessment (NPA), which estimated appellant's income based on wage income received by the County of San Joaquin and the San Joaquin County Health Commission,² and proposed additional tax, penalties, the filing enforcement fee, and interest.
4. On June 10, 2024, appellant protested the NPA, stating that she worked only for one employer in 2021, San Joaquin County, and had no knowledge of the income reported by the San Joaquin County Health Commission. She provided a copy of Form W-2, which showed that San Joaquin County paid wages of \$88,260.89 to appellant.
5. On August 2, 2024, FTB issued a Notice of Action affirming the NPA.
6. Appellant then filed this timely appeal.
7. FTB previously issued appellant a Demand and an NPA for the 2019 tax year, following appellant's failure to respond to a Request for Tax Return for that tax year. FTB's NPA for 2019 reflected that appellant received wage income of \$98,953, including \$13,462 from the San Joaquin County Health Commission.

¹ For the 2021 tax year, the filing threshold for a single individual under 65 years of age with no dependents was gross income of more than \$19,310 or California adjusted gross income of more than \$15,448. The San Joaquin Community Health Information Exchange, Inc. reported to the Employment Development Department (EDD) that it paid appellant wages of \$94,997, and the County of San Joaquin reported to the EDD that it paid appellant wages of \$88,260. In addition, the Board of Registered Nursing reported that appellant held an occupational license.

² FTB has not explained the discrepancy in the title of the payor between the EDD report, which showed that appellant received income from the San Joaquin Community Health Information Exchange, Inc. and the NPA, which showed that appellant received income from an entity called the San Joaquin County Health Commission.

DISCUSSION

Issue 1: Whether appellant has established error in FTB's proposed assessment for the 2021 tax year.

R&TC section 18501 requires every individual subject to the Personal Income Tax Law to make and file a return with FTB “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 FTB 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).) FTB 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 FTB proposes a tax assessment based on an estimate of income, then FTB’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.*) Once FTB has met its initial burden, the assessment is presumed correct, and the taxpayer has the burden of proving error in the assessment. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509, 514; *Appeal of Bindley*, *supra.*)

The minimum gross income required to file a California income tax return for the 2021 tax year was \$19,310. The income appellant received exceeded this amount. While appellant contends in an unsworn statement that she has no knowledge of the income from the San Joaquin County Health Commission, and that her income for 2021 was only \$88,628.89 (from San Joaquin County), as of the date briefing closed, appellant has not filed a California income tax return for the 2021 tax year. Appellant has failed to provide corroborating evidence establishing her income for the 2019 tax year. “A taxpayer is not in a good position to criticize [FTB’s] estimate of his or her liability when he or she fails to file a required return and, in addition, subsequently refuses to submit information upon request.” (*Appeal of Shanahan*, *supra.*) Under these circumstances, appellant has not shown error in FTB’s proposed assessment of additional tax.

Issue 2: Whether appellant has established a basis to abate the late filing penalty.

When FTB imposes a penalty, the law presumes that the penalty was imposed correctly, and the burden of proof is on the taxpayer to establish otherwise. (*Appeal of Xie*, 2018-OTA-076P.) 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 not due to willful neglect. Tax returns filed on a calendar-year basis are due on April 15 of the year following the close of the calendar year. (R&TC, § 18566.) If taxpayers file by October 15, they receive an automatic extension, and the penalty is not triggered.³ (Cal. Code Regs., tit. 18, § 18567.) However, if the return is not filed within six months of the original due date, no extension is allowed. (*Ibid.*)

Appellant has not provided any evidence that, as of the date briefing closed, she filed a tax return or had reasonable cause for failing to file a tax return. Appellant's only argument is an unsworn statement that she had no knowledge of the income from San Joaquin County Health Commission and that her income for 2021 was only \$88,628.89 from San Joaquin County. However, the record shows that the payor reported the income paid to appellant in 2021 to the EDD. Appellant's unsupported assertions are not sufficient to satisfy her burden of proof. (*Appeal of Bindley, supra.*) Therefore, appellant has not established a basis to abate the late filing penalty.

Issue 3: Whether appellant has established a basis to abate the demand penalty.

If any 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 tax deficiency assessed by FTB concerning the assessment of which the return was required. (R&TC, § 19133.) 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 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.

Here, appellant failed to timely respond to the 2021 Demand and was also issued a Demand and NPA for the 2019 tax year. Therefore, both conditions to impose demand penalty were met. The 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., 2020-OTA-057P.*) Here, appellant has not explained or

³ For individual taxpayers, the 2021 tax filing deadline was April 15, 2022. (R&TC, § 18566.) The automatic six-month extension extended the deadline to October 15, 2022. (Cal. Code Regs., tit. 18, § 18567.) As October 15, 2022, was a Saturday, returns could be filed on Monday, October 17, 2022, without a late filing penalty. (Cal. Code Regs., tit. 18, § 18566.)

submitted evidence to establish reasonable cause for her failure to respond to the 2021 Demand. Therefore, appellant has not established a basis to abate the demand penalty.

Issue 4: Whether appellant has shown that the filing enforcement fee should be abated.

FTB shall impose a filing enforcement fee if a taxpayer fails or refuses to file a 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; see *Appeal of Auburn Old Town Gallery, LLC*, 2019-OTA-319P.)

Here, FTB informed appellant that she would be subject to the filing enforcement fee if appellant did not timely file a tax return for the 2021 tax year. FTB did not receive a return from appellant within the prescribed period in the Demand nor did appellant provide any proof of mailing the 2021 California income tax return. Therefore, there is no basis to abate the filing enforcement fee.

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

Interest must be assessed from the date a tax payment is due through the date that it is paid. (R&TC, § 19101). Imposing interest is mandatory, and FTB cannot abate interest except where authorized by law. (*Appeal of Balch*, 2018-OTA-159P.) Interest is not a penalty; it is compensation for the use of money. (*Ibid.*) There is no reasonable cause exception to the imposition of interest.

To obtain interest relief, appellant generally must qualify under R&TC section 19104 (pertaining to an unreasonable error or delay by FTB in the performance of a ministerial or managerial act) or section 21012 (pertaining to reasonable reliance on FTB's written advice).⁴ Appellant does not raise any specific arguments for interest abatement under any code section and OTA finds no evidence to support any relief in this case. Accordingly, there is no basis to abate interest.

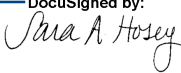
⁴ R&TC section 19112 also allows FTB to abate interest if it determines that an individual or fiduciary demonstrates inability to pay that interest solely because of extreme financial hardship caused by significant disability or other catastrophic circumstance. However, OTA does not have the legal authority to review or overturn FTB's denial of a waiver of interest based on extreme financial hardship. (*Appeal of Moy*, 2019-OTA-057P.)

HOLDINGS

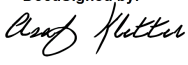
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2. Appellant has not established a basis to abate the late filing penalty.
3. Appellant has not established a basis to abate the demand penalty.
4. Appellant has not shown that the filing enforcement fee should be abated.
5. Appellant has not established a basis for interest abatement.

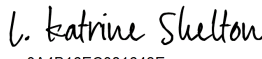
DISPOSITION

FTB’s action is sustained in full.

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 Sara A. Hosey
 Administrative Law Judge

We concur:

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 Asaf Kletter
 Administrative Law Judge

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 L. Katrine Shelton
 Administrative Law Judge

Date Issued: 1/5/2026