

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 241218375
ESTATE OF R. MURRAY (DEC'D))
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OPINION

Representing the Parties:

For Appellant: Shayla Murray, Representative

For Respondent: Shah Khan, Program Specialist

K. SHELTON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, the Estate of R. Murray (Dec'd) (appellant)¹ appeals an action by the Franchise Tax Board (respondent) proposing additional tax of \$46,985, a late-filing penalty of \$11,746.25, 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 had a filing requirement and a tax liability for the 2021 tax year.
2. Whether appellant has established reasonable cause to abate the proposed late-filing penalty imposed under R&TC section 19131.
3. Whether appellant has established cause to abate interest.

FACTUAL FINDINGS

1. Appellant did not file a Form 540, California Resident Income Tax Return, for the 2021 tax year.
2. In November of 2023, appellant died.

¹ OTA shall refer to the individual appellant, R. Murray, and the deceased appellant's estate, the Estate of R. Murray (Deceased), as "appellant" for the sake of convenience.

3. Respondent subsequently issued appellant a Request for Tax Return (Request) based on information respondent received from the Internal Revenue Service (IRS) indicating that appellant received a payment of a pension or other retirement income from an annuity and life company. In the Request, respondent noted that the information indicated that appellant may have had a requirement to file a California income tax return, and requested that appellant either file a return, provide a copy of the filed return, or explain why appellant was not required to file a return. Someone acting on appellant's behalf submitted a response to the Request, which consisted of only the first two pages of the Request and appellant's death certificate.
4. Later, respondent issued appellant a Determination of Filing Requirement – Request (Determination). In the Determination, respondent stated that it determined that appellant had a requirement to file a California tax return, and if appellant did not file a return that it may assess tax, a demand penalty, a late-filing penalty, and interest. No one acting on appellant's behalf responded to the Determination.
5. Respondent then issued appellant a Notice of Proposed Assessment (NPA). In the NPA, respondent estimated appellant's taxable income to be \$503,201, and proposed a total tax of \$46,985, a late-filing penalty of \$11,746.25, and applicable interest. Someone acting on appellant's behalf provided a response to the NPA, which consisted of the first two pages of the NPA and appellant's death certificate. Shortly thereafter, respondent issued appellant a Notice of Action that affirmed the NPA.
6. Appellant's daughter, acting in the capacity of the representative for appellant, timely appealed.

DISCUSSION

Issue 1: Whether appellant has a filing requirement and a tax liability for the 2021 tax year.

California residents are taxed upon their entire taxable income. (R&TC, § 17041(a).) Every individual subject to California's Personal Income Tax Law is required to make and file a return with respondent when the taxpayer's income exceeds certain dollar amounts. (R&TC, § 18501(a)(1)-(4).) R&TC section 18501 requires every individual subject to California's 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 income thresholds (depending on each taxpayer's individual circumstances) are exceeded. (R&TC, § 18501(a)(1)-(4).)

If a taxpayer fails to file a return, then respondent may, “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 of tax 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 respondent has met its initial burden, its proposed assessment of tax is presumed correct, and the taxpayer has the burden of proving that the proposed assessment is incorrect. (*Ibid.*)

Here, respondent determined that appellant had unreported taxable income based on information provided by the IRS from a third party reflecting a payment of retirement or pension income to appellant in the 2021 tax year. Respondent has introduced a minimal factual foundation to support the estimated income and proposed assessment of tax and has, therefore, met its burden of proof. The assessment of tax proposed by respondent is presumed correct, and the burden shifts to appellant to prove that the proposed assessment is incorrect.

In the appeal, appellant’s representative did not challenge the fact that appellant received taxable income in the 2021 tax year, the amount of income, or the amount of the tax liability that respondent estimated and proposed. Rather, appellant’s representative stated in the appeal that appellant was deceased, which appears to be an argument that appellant’s unfortunate passing resolves appellant’s tax return filing obligation or tax liabilities. However, a tax return must still be filed on behalf of a decedent who received income, and the return must report the decedent’s income earned prior to death. (R&TC, § 18505.3; see *Appeals of Helen C. Dunham and Estate of Sam B. Dunham Deceased, William M. Dunham and Berry C. Dunham, Surviving Joint Executors* (63-SBE-110) 1963 WL 1717.)

Appellant’s representative has not provided any additional arguments or facts regarding appellant’s tax return filing obligation or respondent’s estimated income and proposed assessment of tax, and the proposed assessment of tax must be upheld.

Issue 2: Whether appellant has established reasonable cause to abate the proposed late-filing penalty imposed under R&TC section 19131.

Respondent imposes a penalty on a taxpayer for failing to file a tax return on or before its due date or extended due date, unless the taxpayer shows that the failure to file is due to reasonable cause and not due to willful neglect. (R&TC, § 19131(a).) The amount of the penalty is equal to five percent of the amount of tax due for each month between the due date of the return and the date on which the return is filed, up to 25 percent of the amount of tax. (R&TC, § 19131(a).)

Generally, the date prescribed for the payment of the tax is the due date of the return (without regard to extensions of time for filing). (R&TC, § 19001.) For the 2021 tax year, the return filing and tax payment due date was April 15, 2022, with an automatic six-month extension to October 15, 2022. (R&TC, § 18566.)² If a taxpayer files the return by October 15, the taxpayer receives an automatic extension, and the penalty is not triggered. (Cal. Code Regs., tit. 18, § 18567.)

When respondent imposes a late-filing penalty, it is presumed that the late-filing penalty was correctly imposed, and the burden of proof is on the taxpayer to show that the penalty was not properly imposed or that reasonable cause exists to abate the penalty. (*Appeal of Xie*, 2018-OTA-076P.) To overcome the presumption of correctness of the asserted penalty, the taxpayer must provide credible and competent evidence supporting a claim of reasonable cause. (*Ibid.*) To establish reasonable cause, the taxpayer must show the failure to timely file a return occurred despite the exercise of “ordinary business care and prudence.” (*Appeal of Friedman*, 2018-OTA-077P.)

Appellant did not file a return for the 2021 tax year but had an obligation to do so; therefore, respondent properly asserted the late-filing penalty. (R&TC, § 19131(a).) Appellant’s representative has not made any arguments or presented any facts that would indicate that appellant had reasonable cause for failing to file a return for the 2021 tax year and is not liable for the late-filing penalty. Although the facts of appellant’s apparent poor health and passing approximately a year and a half after the due date for filing the 2021 tax return may suggest reasonable cause, OTA cannot determine or presume, based on the evidence in the record, that appellant had reasonable cause for failing to file the 2021 tax return. Accordingly, the imposition of the proposed late-filing penalty is affirmed.

² 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, a taxpayer could file a return on Monday, October 17, 2022, without penalty. (Cal. Code Regs., tit. 18, § 18566.)

Issue 3: Whether appellant has established cause to abate interest.

Imposing interest is mandatory, and respondent cannot abate interest except where authorized by law. (R&TC, § 19101(a); *Appeal of Balch*, 2018-OTA-159P.) Generally, to obtain relief from interest, a taxpayer must qualify under R&TC section 19104 (abatement of interest), section 19112 (waiver of interest), or section 21012 (waiver upon certain circumstances). Interest is not a penalty; it is compensation for the use of money. (*Appeal of Balch, supra.*) There is no reasonable cause exception to the imposition of interest. (*Appeal of Gorin*, 2020-OTA-018P.)

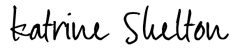
Under R&TC section 19104, respondent is authorized to abate interest if there has been an unreasonable error or delay in the performance of a ministerial or managerial act by an employee of respondent. Here, appellant has not alleged, and the record does not reflect, any such errors or delays. Under R&TC section 19112, respondent may waive the interest for any period for which it determines that the taxpayer has an inability to pay the interest because of extreme financial hardship caused by a significant disability or catastrophe. OTA generally lacks jurisdiction over R&TC section 19112. (*Appeal of Moy*, 2019-OTA-057P.) Moreover, respondent has not made a determination that appellant qualifies for relief from the accrual of interest under R&TC section 19112, nor has appellant alleged facts that would qualify for relief. The relief of interest under R&TC section 21012 is not relevant here, because respondent did not provide appellant with any written advice. Accordingly, appellant has not established cause to abate interest.

HOLDINGS


1. Appellant had a filing requirement and a tax liability for the 2021 tax year.
2. Appellant has not established reasonable cause to abate the proposed late-filing penalty imposed under R&TC section 19131.
3. Appellant has not established cause to abate interest.


DISPOSITION

Respondent's action is sustained.

Signed by:

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 L. Katrine Shelton
 Administrative Law Judge

We concur:

Signed by:

1B8E5D433F1D4D5...
 Greg Turner
 Administrative Law Judge

Signed by:

CB1F7DA37831416...
 Josh Lambert
 Administrative Law Judge

Date Issued: 2/24/2026