

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

In the Matter of the Appeal of: ) OTA Case No. 18073429  
**H. TAHAMI** )  
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**OPINION**

Representing the Parties:

For Appellant: H. Tahami

For Respondent: Eric R. Brown, Tax Counsel III

S. HOSEY, Administrative Law Judge: Pursuant to California Revenue and Taxation Code (R&TC) section 19324, H. Tahami (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$52,396.50 for the 2015 tax year.

Appellant waived his right to an oral hearing and therefore the matter is being decided based on the written record.

**ISSUES**

1. Is appellant liable for the late-filing penalty imposed under R&TC section 19131?
2. Is appellant liable for the notice and demand (demand) penalty imposed under R&TC section 19133?

**FACTUAL FINDINGS**

1. Appellant did not initially file a California personal income tax return for the 2015 tax year.
2. Through its Filing Enforcement Program, FTB received wage information indicating that appellant received sufficient income to require the filing of a 2015 tax return. Based on this information, FTB sent appellant a Demand for Tax Return on April 18, 2017, instructing appellant to file a 2015 income tax return, provide FTB with a copy of the return if already filed, or explain why appellant was not required to file a 2015

- income tax return. The Demand stated that if appellant did not timely respond to the Demand, a demand penalty equal to 25 percent of the total tax would be assessed.
3. Appellant did not respond to the Demand, and FTB issued an Notice of Proposed Assessment (NPA) on June 19, 2017, which proposed to assess additional tax of \$124,601, a late-filing penalty of \$31,150.25, a demand penalty of \$31,150.25, and a filing enforcement fee of \$81, plus applicable interest.
  4. On August 18, 2017, appellant filed his 2015 California Resident Income Tax Return, reporting taxable income, withholding credits and a tax due of \$90,702. Appellant also self-assessed a \$1,366 estimate tax penalty.
  5. On November 20, 2017, after processing appellant's return, FTB sent to appellant a Notice of Tax Return Change – Revised Balance which, as relevant here, reduced the late-filing penalty and the demand penalty to \$26,198.25.
  6. On November 20, 2017, appellant remitted payment to fully satisfy his 2015 tax year account.
  7. Appellant filed a claim for refund of the late-filing penalty and the demand penalty, arguing that he timely filed his tax return on October 17, 2016.
  8. FTB issued an NPA for the 2011 tax year dated March 13, 2013, and an NPA for the 2012 tax year dated May 19, 2014.
  9. FTB denied his claim for refund and this timely appeal followed.

### DISCUSSION

#### Issue 1 - Is appellant liable for the late-filing penalty imposed under R&TC section 19131?

R&TC section 19131 imposes a penalty for the failure to file a return on or before the due date, unless it is shown that the late filing is due to reasonable cause and not due to willful neglect. (R&TC, § 19131(a).) To establish reasonable cause, “the taxpayer must show that the failure to file timely returns occurred despite the exercise of ordinary business care and prudence, or that such cause existed as would prompt an [ordinarily] intelligent and prudent business[person] to have so acted under similar circumstances.” (*Appeal of Tons* (79-SBE-027) 1979 WL 4068.) A late-filing penalty imposed by FTB is presumed to be correct, and the burden of proof is on the taxpayer to establish that reasonable cause exists to support an abatement of the penalty. (*Ibid.*)

Ignorance of the law does not excuse the failure to file a timely return. (*Appeal of Diebold, Inc.* (83-SBE-002) 1983 WL 15389.) In addition, the United States Supreme Court has found that each taxpayer has a personal, non-delegable obligation to file a tax return by the due date. (*United States v. Boyle* (1985) 469 U.S. 241, 252.)

Appellant argues that he timely filed his 2015 return through his tax preparer. The only support appellant provides is his contention that the IRS timely received his federal return, under extension, and the federal and state returns were filed at the same time. However, appellant provides no documentary or other evidence to support this contention, such as a proof of mailing or a statement from his tax preparer under penalty of perjury. Taxpayers have a personal, non-delegable duty to file their tax returns by their due dates and the taxpayer's reliance on an agent to file the return is not reasonable cause. (*United States v. Boyle, supra.*) FTB properly imposed the late-filing penalty and appellant has not demonstrated reasonable cause to abate the late-filing penalty.

Issue 2 - Is appellant liable for the demand penalty imposed under R&TC section 19133?

R&TC section 19133 provides that if a taxpayer fails to file a return upon notice and demand by FTB, FTB may impose a penalty of 25 percent of the amount of tax assessed pursuant to R&TC section 19087, unless the failure is due to reasonable cause and not willful neglect. California Code of Regulations, title 18, section 19133 further provides that for individuals, the demand penalty will only be imposed if the following two conditions are satisfied:

- (1) the taxpayer fails to timely respond to a current Demand for Tax Return in the manner prescribed, and
- (2) the FTB has proposed an assessment of tax under the authority of Revenue and Taxation Code section 19087, subdivision (a), after the taxpayer failed to timely respond to a Request for Tax Return or a Demand for Tax Return in the manner prescribed, at any time during the four-taxable-year period preceding the taxable year for which the current Demand for Tax Return is issued.

(Cal. Code Regs., tit. 18, § 19133(b)(1)-(2).)

FTB submitted an NPA that was issued for the 2011 tax year dated March 13, 2013, and an NPA that was issued for the 2012 tax year dated May 19, 2014. Both were issued after FTB issued a request or demand for tax return after which appellant failed to respond. Therefore, the

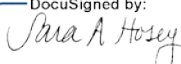
penalty was properly imposed, and appellant has not shown that his failure to timely respond was due to reasonable cause and not willful neglect.

HOLDINGS

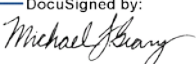
1. Appellant is liable for the late-filing penalty imposed under R&TC section 19131.
2. Appellant is liable for the demand penalty imposed under R&TC section 19133.

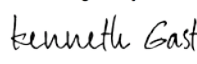
DISPOSITION

FTB’s action is sustained in full.

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 Sara A. Hosey  
 Administrative Law Judge

We concur:

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 Michael F. Geary  
 Administrative Law Judge

DocuSigned by:  
  
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 Kenneth Gast  
 Administrative Law Judge

Date Issue: 3/25/2020