

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**C. MICHELLI**

) OTA Case No. 20066284  
)  
)  
)  
)  
)

**OPINION**

Representing the Parties:

For Appellant: C. Michelli

For Respondent: Christopher M. Cook, Tax Counsel III

A. ROSAS, Administrative Law Judge: Under Revenue and Taxation Code (R&TC) section 19324, appellant C. Michelli appeals respondent Franchise Tax Board’s actions in denying appellant’s claims for refund for tax years 2015 through 2017. Appellant appeals the imposition of the demand and late-filing penalties for 2015 in the sum of \$338, the demand and late-filing penalties for 2016 in the sum of \$421, and the late-payment penalty for 2017 of \$179.85. Appellant waived the right to an oral hearing, and therefore we decide this matter based on the written record.

**ISSUES**

1. Whether appellant has established reasonable cause to abate the demand penalties for tax years 2015 and 2016.
2. Whether appellant has established reasonable cause to abate the late-filing penalties for tax years 2015 and 2016.
3. Whether appellant has established reasonable cause to abate the late-payment penalty for tax year 2017.

**FACTUAL FINDINGS**

1. *Prior to the Tax Years at Issue:* In 2012, respondent issued a demand for a 2010 tax return and followed it with a Notice of Proposed Assessment (NPA) in 2012 after

- appellant failed to respond. In 2014, respondent issued a demand for a 2012 tax return and followed it with an NPA in 2014 after appellant failed to respond. These NPAs resulted in final assessments.
2. *Tax Year 2015*: In 2017, respondent sent appellant a demand for a 2015 tax return. When appellant did not respond, respondent issued an NPA. Respondent assessed a demand penalty of \$169 and a late-filing penalty of \$169, plus interest and fees.
  3. *Tax Year 2016*: In 2018, respondent sent appellant a demand for a 2016 tax return. When appellant did not respond, respondent issued an NPA. Respondent assessed a demand penalty of \$210.50, a late-filing penalty of \$210.50, and an estimated tax penalty, plus interest and a fee.
  4. *Tax Year 2017*: Appellant filed a timely tax return for tax year 2017 but did not pay the tax due by the deadline. Respondent issued an NPA. Respondent assessed a late-payment penalty of \$179.85.
  5. In July 2018, appellant filed returns for tax years 2015 and 2016. As of February 24, 2020, appellant had paid all outstanding tax balances, penalties, fees, and interest for the three tax years at issue.
  6. In April 2020, appellant filed claims for refund for tax years 2015, 2016, and 2017, seeking refunds in the sum of approximately \$1,400.<sup>1</sup> Respondent deemed these refund claims to be for the demand and late-filing penalties (2015 & 2016) and the late-payment penalty (2017), plus interest. Respondent then denied the three claims for refund. This timely appeal followed.<sup>2</sup>

## DISCUSSION

### Issue 1 – Whether appellant has established reasonable cause to abate the demand penalties for tax years 2015 and 2016.

Respondent imposed demand penalties of \$169 and \$210.50 for tax years 2015 and 2016, respectively. California imposes a penalty for the failure to file a return upon respondent's

---

<sup>1</sup> The original amount of appellant's claims for refund included items that are not at issue in this appeal, such as fees, estimated tax penalty, and interest.

<sup>2</sup> In appellant's appeal letter, he requests a refund of \$338 for 2015, \$421 for 2016, and \$179.85 for 2017, plus applicable interest. These amounts reflect the demand and late-filing penalties for 2015, the demand and late-filing penalties for 2016, and the late-payment penalty for 2017. Appellant does not appeal the fees, estimated tax penalty, or interest.

notice and demand, unless the failure is due to reasonable cause and not willful neglect. (R&TC, § 19133.) The demand penalty is designed to penalize a taxpayer's failure to respond to the demand, not a taxpayer's failure to pay the proper tax. (*Appeal of Bryant* (83-SBE-180) 1983 WL 961596.) With respect to individuals, respondent will impose the demand penalty when a taxpayer fails to respond to a current demand for a tax return, and respondent has issued an NPA in response to the taxpayer's failure to respond to a similar demand during the four-year period preceding the year at issue. (Cal. Code Regs., tit. 18, § 19133(b).) Here, both requirements are satisfied. First, regarding the current tax years at issue here, 2015 and 2016, appellant failed to respond to the demands issued in 2017 and 2018, respectively. Second, regarding the four-year period preceding the years at issue, appellant failed to respond to the demands issued in 2012 and 2014 for tax years 2010 and 2012, respectively; when appellant failed to respond, respondent issued NPAs. Thus, respondent imposed the demand penalties properly.

There are no allegations of willful neglect in this appeal. Thus, our sole focus here is on reasonable cause. To establish reasonable cause to abate the demand penalty, a taxpayer must show that the failure occurred despite the exercise of ordinary business care and prudence. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P (*GEF*).) A taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*GEF, supra; Appeal of Moren*, 2019-OTA-176P.)

The applicable standard of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(c).) That is, a party must establish by documentation or other evidence that the circumstances it asserts are more likely than not to be correct. (*Concrete Pipe and Products of California, Inc. v. Construction Laborers Pension Trust for Southern California* (1993) 508 U.S. 602, 622.) A taxpayer must provide credible and competent evidence to support the claim of reasonable cause; otherwise the penalties will be not be abated. (*Appeal of Xie*, 2018-OTA-076P (*Xie*).)

We understand appellant's position and situation. Appellant states that she is not working, that she cannot work, and that she received Social Security and disability benefit payments. Appellant provided evidence showing that she received social security benefit payments in 2019 as well as unemployment benefit payments in 2020. Although we can empathize with appellant's situation, this situation alone does not satisfy the applicable standard

of proof. Appellant's arguments and limited evidence do not establish reasonable cause to abate the demand penalties.

Issue 2 – Whether appellant has established reasonable cause to abate the late-filing penalties for tax years 2015 and 2016.

Because appellant failed to timely file returns for tax years 2015 and 2016, respondent imposed late-filing penalties of \$169 and \$210.50, respectively. Respondent imposes this penalty when a taxpayer does not timely file a return, unless it is shown that the failure to timely file was due to reasonable cause and not due to willful neglect. (R&TC, § 19131(a).) When respondent imposes this penalty, the law presumes that it is correct. (*Xie, supra.*) A taxpayer has the burden of establishing reasonable cause. (*Ibid.*) Appellant does not dispute the late-filing penalty computation.

To establish reasonable cause to abate the late-filing penalty, a taxpayer must show that the failure occurred despite the exercise of ordinary business care and prudence. (*Xie, supra.*) For the same reasons discussed above, we conclude that appellant's arguments and limited evidence do not establish reasonable cause to abate the late-filing penalties.

Issue 3 – Whether appellant has established reasonable cause to abate the late-payment penalty for tax year 2017.

Because appellant failed to timely pay the tax liability for tax year 2017, respondent imposed a late-payment penalty of \$179.85. The penalty is presumed correct unless the taxpayer can demonstrate that the late payment resulted from reasonable cause and not willful neglect. (R&TC, § 19132.) Appellant does not dispute the late-payment penalty computation.

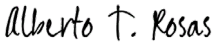
To establish reasonable cause to abate the late-payment penalty, a taxpayer must show that the failure occurred despite the exercise of ordinary business care and prudence. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-25P.) For the same reasons discussed above, we conclude that appellant's arguments and limited evidence do not establish reasonable cause to abate the late-payment penalty.

HOLDINGS

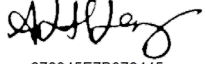
1. Appellant did not establish reasonable cause to abate the demand penalties for tax years 2015 and 2016.
2. Appellant did not establish reasonable cause to abate the late-filing penalties for tax years 2015 and 2016.
3. Appellant did not establish reasonable cause to abate the late-payment penalty for tax year 2017.

DISPOSITION

We sustain respondent’s denial of appellant’s claims for refund.

DocuSigned by:  
  
 B969FE4BD4914D5  
 Alberto T. Rosas  
 Administrative Law Judge

We concur:

DocuSigned by:  
  
 272945E7B372445...  
 Andrea L.H. Long  
 Administrative Law Judge

DocuSigned by:  
  
 25F8FE08FF56478...  
 Natasha Ralston  
 Administrative Law Judge

Date Issued: 1/12/2021