

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

In the Matter of the Appeal of: ) OTA Case No. 20096739  
 )  
**P. TRAVIS, JR., AND** )  
**H. TRAVIS** )  
 \_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: P. Travis, Jr.  
H. Travis

For Respondent: Noel Garcia, Tax Counsel

A. WONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, appellants P. Travis, Jr., and H. Travis (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants' claim for refund in the following amounts: \$3,366.75 for a notice-and-demand penalty (demand penalty) imposed for the 2016 tax year and \$3,350.25 for a demand penalty imposed for the 2017 tax year.<sup>1</sup> Appellants also request reimbursement of \$375 in fees that they allegedly paid to a bank (bank fees) with respect to the 2016 tax year.

Appellants waived their right to an oral hearing, so we are deciding this matter based on the written record.

**ISSUES**

1. Whether appellants have established reasonable cause to abate the demand penalty.
2. Whether the Office of Tax Appeals (OTA) has jurisdiction to consider appellants' request for reimbursement of bank fees.

---

<sup>1</sup> On appeal, FTB concedes to abate the 2016 demand penalty of \$3,366.75, so we will not address that penalty's merits. However, we will describe facts relating to the 2016 demand penalty to the extent that they are relevant to the 2017 demand penalty.

FACTUAL FINDINGS

1. Appellants were required to file a California income tax return (return) for both the 2016 tax year and the 2017 tax year, but did not timely do so.
2. On May 1, 2018, FTB issued to appellant P. Travis, Jr., a Demand for Tax Return for the 2016 tax year (2016 Demand),<sup>2</sup> demanding that, by June 6, 2018, he either file a 2016 return, prove that he already filed one, or otherwise provide information that he was not required to file a 2016 return. FTB did not receive a response by the June 6, 2018 deadline.
3. On July 2, 2018, FTB issued to appellant P. Travis, Jr., a Notice of Proposed Assessment for the 2016 tax year (2016 NPA).<sup>3</sup> The 2016 NPA proposed a total assessment of \$9,471.22.
4. On October 28, 2019, FTB issued to appellant P. Travis, Jr., a Demand for Tax Return for the 2017 tax year (2017 Demand), demanding that, by November 27, 2019, he either file a 2017 return, prove that he already filed one, or otherwise provide information that he was not required to file a 2017 return. FTB did not receive a response by the November 27, 2019 deadline.
5. On March 3, 2020, FTB issued to appellant P. Travis, Jr., a Notice of Proposed Assessment for the 2017 tax year (2017 NPA). The 2017 NPA proposed a total assessment of \$8,674.43, which included a demand penalty of \$4,989.75.
6. On May 13, 2020, appellants filed their 2017 return with a filing status of “married filing jointly,” reporting an overpaid tax balance and corresponding refund of \$4,766.
7. FTB processed appellants’ 2017 return as filed and reduced the demand penalty from \$4,989.75 to \$3,350.25, resulting in a revised refund of \$1,415.75, which FTB paid to appellants on May 20, 2020.

---

<sup>2</sup> Although the 2016 Demand omitted “Jr.” from the addressee’s name, there is no dispute that appellant P. Travis, Jr., was the intended recipient.

<sup>3</sup> The 2016 NPA omitted “Jr.” from the addressee’s name, but there is no dispute that appellant P. Travis, Jr., was the intended recipient.

8. On May 29, 2020, appellants disputed the revised demand penalty of \$3,350.25 in an email to their California State Assembly member, who then contacted FTB. FTB treated appellants' email as a claim for refund, which it subsequently denied.<sup>4</sup>
9. This timely appeal followed.

### DISCUSSION

#### Issue 1: Whether appellants have established reasonable cause to abate the demand penalty.

The demand penalty is prescribed by R&TC section 19133 and California Code of Regulations, title 18, (Regulation) section 19133.

Per R&TC section 19133, if a taxpayer fails to furnish any information requested in writing by FTB or to file a required return upon notice and demand by FTB, then FTB may add the demand penalty unless the failure is due to reasonable cause and not willful neglect. (R&TC, § 19133; see also Cal. Code Regs., tit. 18, § 19133(a).)

Per Regulation section 19133(b), for an individual taxpayer, FTB will only impose the demand penalty if the following two conditions are both satisfied: (1) the taxpayer fails to timely respond to a current Demand for Tax Return in the manner prescribed; and (2) FTB has proposed an assessment of tax after the taxpayer failed to timely respond to, as relevant here, 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).)

Here, appellants failed to timely respond to the 2017 Demand. Previously, appellants also failed to timely respond to the 2016 Demand, and FTB issued the 2016 NPA to them. Because this satisfied the conditions for imposing the demand penalty on individuals in Regulation section 19133 (see *Appeal of Jones*, 2021-OTA-144P), we conclude that FTB properly imposed the demand penalty for the 2017 tax year.

On appeal, appellants argue that they had reasonable cause for failing to file a 2017 return in response to the 2017 Demand, which FTB issued on October 28, 2019: during the timeframe at issue, appellant H. Travis frequently traveled to Tennessee to care for her father, who had serious, progressively worsening health issues; meanwhile, appellant P. Travis, Jr., stayed in California, working an average of 70 hours per week and caring for their two minor children, one

---

<sup>4</sup> The record does not include a copy of the May 29, 2020 email/claim for refund.

of whom also had medical issues. Appellants contend that appellant H. Travis's father passed away on November 11, 2019. Appellants also contend that, in July 2019, they dropped off paperwork for the 2017 tax year with their longtime tax preparer in Tennessee, but the Tennessee tax preparer was subsequently hospitalized and passed away on November 23, 2019. Appellants contend that they engaged a new tax preparer in California in December 2019, but the California tax preparer could not complete appellants' 2017 return until May 2020 due to her existing workload and a temporary, pandemic-induced office closure.

In response, FTB acknowledges that significant illness or personal difficulties may constitute reasonable cause, but argues that appellants have yet to provide evidence substantiating their contentions. Specifically, FTB acknowledges that appellants had relied upon the late Tennessee tax preparer to prepare their tax returns for past tax years, but argues that appellants have failed to provide documentation showing that they delivered their 2017 tax documents to her in July 2019. FTB states that, if appellants provide credible supporting evidence, then it would reconsider its position on the demand penalty.<sup>5</sup> Absent such evidence, FTB argues that the demand penalty must be sustained.

As noted earlier, the demand penalty may be abated if a taxpayer's failure to timely respond to a notice and demand is due to reasonable cause and not willful neglect. (R&TC, § 19133; see also Cal. Code Regs., tit. 18, § 19133(a).) The burden of proving reasonable cause for failing to file upon demand is on the taxpayer. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) To establish reasonable cause, a taxpayer must show that the failure to timely respond to a demand occurred despite the exercise of ordinary business care. (*Appeal of Jones, supra.*) The taxpayer's reason for failing 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., supra.*) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid.*)

Here, appellants have not supplied any documentation supporting their assertions regarding reasonable cause. Even during the OTA briefing period for this appeal, when FTB specified the documents that could substantiate appellants' assertions and essentially invited

---

<sup>5</sup> FTB specifies that it would accept the following types of supporting documentation: correspondence or receipts showing that appellants' 2017 tax documents were provided to their Tennessee tax preparer in July 2019 for the purpose of preparing their 2017 return; or notarized statements attesting to the same signed under penalty of perjury by the late Tennessee tax preparer's employees or former employees.

appellants to provide them, appellants did not respond. For lack of evidence substantiating their contentions on appeal, we conclude that appellants have not established reasonable cause to abate the demand penalty.

Issue 2: Whether OTA has jurisdiction to consider appellants' request for reimbursement of bank fees.

In their opening brief, appellants assert that, on three separate occasions in May, June, and August 2019, FTB erroneously levied appellants' bank account with respect to liabilities for the 2016 tax year. For each instance, appellants' bank allegedly charged them \$125. According to appellants, after each occurrence, FTB immediately reversed the levy, and the bank restored the levied funds but not the bank fees, which totaled \$375. Appellants now request reimbursement of \$375 in purported bank fees, which allegedly resulted from erroneous levies by FTB.

In response, FTB contends that OTA lacks jurisdiction to consider appellants' request for reimbursement of bank fees resulting from FTB's collection action.

R&TC section 21018(a) states that a person may file a claim with FTB for reimbursement of charges or fees imposed on that person by an unrelated business entity (e.g., a bank) as a direct result of an erroneous levy by FTB. Such reimbursement claims must be filed within 90 days from the date of the erroneous levy. (R&TC, § 21018(b).)

First, there is no evidence in the record that appellants' bank imposed \$375 in bank fees on them or that appellants have filed with FTB a timely claim for reimbursement of bank fees. Absent bank fees or a timely reimbursement claim, appellants would not be entitled to reimbursement of bank fees.

Second, even if there were bank fees and a timely-filed reimbursement claim with FTB for improper bank fees, R&TC section 21018 does not provide OTA with appellate jurisdiction to review FTB's determination regarding such reimbursement claims. Appellants have also not cited to any authority, either in OTA's Rules of Tax Appeals (Cal. Code Regs., tit. 18, § 30000 et seq.) or elsewhere, that would broaden OTA's jurisdiction to encompass appeals arising from such denied reimbursement claims in the Franchise and Income Tax (FIT) context. Nor are we aware of any such authority. Thus, we find no such authority in the R&TC, OTA's Rules of Tax Appeals, or elsewhere.

Finally, although R&TC section 21018 provides that a person may file a claim with *FTB*

for reimbursement of improper bank fees in the FIT context, it does not supply OTA with jurisdiction to consider such reimbursement requests directly. Thus, we find no such authority in the R&TC.


For the above-stated reasons, we conclude that OTA does not have jurisdiction to consider appellants’ request for reimbursement of bank fees.

HOLDINGS


1. Appellants have not established reasonable cause to abate the demand penalty.
2. OTA does not have jurisdiction to consider appellants’ request for reimbursement of bank fees.


DISPOSITION

We modify FTB’s action per its concession on appeal.<sup>6</sup> Otherwise, we sustain FTB’s action.

DocuSigned by:  
  
 8A4294817AB7463...  
 Andrew Wong  
 Administrative Law Judge

We concur:

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

DocuSigned by:  
  
 CB1E7DA37831416...  
 Josh Lambert  
 Administrative Law Judge

Date Issued: 10/4/2021

<sup>6</sup> See footnote 1, *ante*, page 1.