

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
A. DUNN

) OTA Case No. 19125646
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OPINION

Representing the Parties:

For Appellant: A. Dunn, Appellant

For Respondent: Anne Mazur, Specialist

N. RALSTON, Administrative Law Judge: Pursuant to Revenue and Taxation Code 19324, A. Dunn (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$7,712,¹ plus applicable interest for the 2016 tax year.

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

ISSUES

1. Whether appellant has established reasonable cause for her failure to timely respond to the Demand for Tax Return for the 2016 tax year.
2. Whether appellant has established a basis for abatement of interest.

FACTUAL FINDINGS

1. Appellant failed to file a timely return for the 2016 tax year.² Subsequently, respondent received notice that appellant earned sufficient income to require appellant to file a return.

¹ This amount consists of a demand penalty in the amount of \$7,356.50 and a late filing penalty in the amount of \$356. Appellant does not provide any arguments with respect to the late filing penalty and this penalty will not be addressed further in this Opinion.

² Appellant also failed to timely file returns for tax years 2012, 2013, 2014 and 2015.

2. On April 3, 2018, respondent sent appellant a Demand for Tax Return (Demand) for the 2016 tax year. The Demand instructed that by May 9, 2018, appellant file a tax return, send a copy of the return if one was previously filed, or explain why appellant was not required to file a return. Respondent previously issued a Demand and Notice of Proposed Assessment (NPA) to appellant for the 2013 tax year.
3. Appellant failed to respond to the Demand by the May 9, 2018 due date and respondent subsequently issued an NPA which proposed to assess tax of \$29,426, a late filing penalty, a demand penalty, a filing enforcement cost recovery fee³ and applicable interest.
4. Appellant subsequently filed the 2016 return reporting tax due. Respondent revised appellant's income in accordance with the amounts shown on the return and issued a Notice of State Income Tax Due to notify appellant of the amount still owing.⁴
5. Appellant failed to pay the balance due, thus respondent initiated involuntary collection action. Appellant's balance was satisfied on June 13, 2019.
6. On September 9, 2019, respondent received appellant's claim for refund of the demand penalty, wherein appellant requested that the demand penalty be abated due to reasonable cause.
7. Respondent denied appellant's claim for refund and this timely appeal followed.

DISCUSSION

Issue 1: Whether appellant has established reasonable cause for her failure to timely respond to the Demand for the 2016 tax year.

R&TC section 19133 imposes a penalty when a taxpayer fails to file a return or provide information upon respondent's notice and demand to do so, unless the failure is due to reasonable cause and not willful neglect. For individuals, respondent will only impose a demand penalty if: (1) the taxpayer fails to respond to a current Demand and (2) at any time during the preceding four tax years, respondent issued an NPA following the taxpayer's failure to timely respond to a Request or a Demand. (Cal. Code Regs., tit. 18, § 19133(b).) Here, appellant failed

³ Appellant does not provide any arguments with respect to the filing enforcement cost recovery fee and this fee will not be addressed further in this Opinion.

⁴ The notice informed appellant that she continued to owe tax, demand and late-filing penalties, and a filing enforcement cost recover fee.

to timely respond to the Demand for the 2016 tax year and also failed to timely respond to the 2013 Demand, resulting in a 2013 NPA during one of preceding four tax years. Thus, respondent properly imposed the demand penalty for the 2016 tax year. (*Appeal of Jones*, 2021-OTA-144P)

Appellant does not dispute that the demand penalty was properly imposed, but rather, argues that she has reasonable cause for failing to timely respond to the Demand. To establish reasonable cause, a 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, *Appeal of Patient Comfort Services, LLC*, 2021-OTA-300P.) Appellant bears the burden of proving reasonable cause for failure to respond to the Demand. (*Appeal of GEF Operating, Inc.*, *supra*).

Appellant contends that she had reasonable cause for failing to respond to Demand, because she was legally blind and not working at the time due to her disability. Appellant asserts that she was physically unable to read the notices. In support of her contentions, appellant provided a letter dated June 4, 2018, from the Permanente Medical Group (TPMG) memorializing a telephone conversation which appellant had with TPMG on May 31, 2018. In the letter, TPMG quotes appellant as stating that she is unable to work and noting that the parties agreed that appellant would continue on temporary total disability until August 29, 2018. Appellant also provided a letter dated April 13, 2018, from Cigna informing appellant that her claim for Long Term Disability benefits had been approved. The letter also stated that appellant's date of disability was August 21, 2017, and that appellant's benefits would begin on February 21, 2018, and would terminate August 20, 2020.

As noted above, the burden is on appellant to show that her failure to respond to the Demand was due to reasonable cause. Although appellant has provided evidence to establish that she suffered from a long-term disability, appellant has failed to demonstrate how this prevented her from responding to the Demand. Thus, appellant has failed to meet her burden to show that her long-term disability established reasonable cause for failing to respond to the Demand. Specifically, we would expect an ordinarily intelligent and prudent businessperson to make arrangements to review their mail or have it reviewed. Here, appellant has not provided any evidence or explanation regarding whether she had made any such arrangements. Further, appellant has not provided information demonstrating whether she had any person who could

assist her with her mail, or why she did not have or seek such assistance. In addition to the Demand from respondent, appellant surely had other important mail, such as bills, documentation related to her disability claim, etc. that needed to be attended to in a timely manner. Appellant has not provided any information to show how she handled such matters. We reached out to appellant and asked her to provide this additional information, but she declined to do so.

Furthermore, appellant continued to earn wage income at the same or greater rate during the 2017 and 2018 tax years, indicating that she was able to conduct her business affairs even after her diagnosis. Therefore, based on the information before us, we cannot determine that appellant has established reasonable cause for failing to respond to the Demand.

Issue 2: Whether appellant has established a basis for abatement of interest.

Interest must be assessed from the date a tax payment is due through the date that it is paid. (R&TC, § 19101.) Imposition of interest is mandatory; it is not a penalty, but is compensation for appellant's use of money after it should have been paid to the state. (*Appeal of Moy*, 2019-OTA-057P.) Interest can only be abated in certain limited situations when authorized by law. (R&TC, § 19101(a); *Appeal of Balch*, 2018-OTA-159P.) There is no reasonable cause exception to the imposition of interest. (*Appeal of Summit Hosting, LLC*, 2021-OTA-216P.) To obtain relief from interest, appellant must qualify under R&TC section 19104, 19112, or 21012 (*Ibid.*) However, based on the evidence and arguments provided in this matter, none of these statutory provisions apply.⁵ Thus, we find that appellant has not established any basis for waiver or abatement of interest.

⁵ Pursuant to R&TC section 19104, respondent is authorized to abate or refund 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 does not assert any such errors or delays occurred. Relief pursuant to R&TC section 21012 is not relevant here because respondent did not provide appellant with any written advice. Relief pursuant to R&TC section 19112 is not relevant here because appellant does not allege extreme financial hardship caused by significant disability or other catastrophic circumstance, which we do not have authority to review. (See *Appeal of Moy*, *supra.*) While appellant has argued that she suffered from a significant disability she has not alleged that it caused her extreme financial hardship.

HOLDINGS

1. Appellant has not established that the demand penalty should be abated.
2. Appellant has not established that interest should be abated.

DISPOSITION

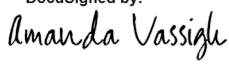
Respondent’s denial of appellant’s claim for refund is sustained.

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 Natasha Ralston
 Administrative Law Judge

We concur:

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 Amanda Vassigh
 Administrative Law Judge

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 Tommy Leung
 Administrative Law Judge

Date Issued: 4/20/2022