OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **S. RAGUNATHAN AND** **P. PARTHASARATHY**	) OTA Case No. 20015671)))))

OPINION

Representing the Parties:

For Appellants:	Jerome A. Clay, Tax Appeals Assistance Program ("TAAP") Mengjun He, TAAP
For Respondent:	David Muradyan, Tax Counsel III Nancy Parker, Tax Counsel IV

H. LE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Ragunathan and P. Parthasarathy (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants' claim for refund of $12,755.50, plus applicable interest, for the 2016 tax year.

Office of Tax Appeals (OTA) Administrative Law Judges Huy "Mike" Le, Natasha Ralston, and Josh Lambert held an electronic oral hearing for this matter on March 29, 2022. At the conclusion of the hearing, OTA closed the record and submitted this matter for an opinion.

ISSUES

1. Whether respondent provided appellants with sufficient notice of its Demand for Tax Return for the 2016 tax year (2016 Demand).
2. Whether respondent properly imposed the demand penalty.
3. Whether appellants have established reasonable cause for failing to timely respond to respondent's 2016 Demand.

FACTUAL FINDINGS

1. 2014 Tax Year[1]
   a. Respondent determined from its records that appellants[2] may have earned income sufficient to require filing a California tax return for the 2014 tax year.
   b. On December 16, 2015, respondent sent appellants a Request for Tax Return (Request) for the 2014 tax year with the deadline of January 20, 2016, to respond to the Request.
   c. Respondent did not receive a response to the 2014 Request, and so respondent issued appellants a Notice of Proposed Assessment (NPA) on February 16, 2016.
   d. On July 9, 2016, appellants filed their 2014 and 2015 tax returns, listing an address in Santa Clara, California.
2. 2016 Tax Year
   a. Respondent determined from its records that appellants may have earned income sufficient to require filing a California tax return for the 2016 tax year.
   b. On March 20, 2018, respondent sent appellants a 2016 Demand to appellants' Santa Clara address.
   c. On April 5, 2018, respondent received notice that the 2016 Demand had been returned.
   d. On May 3, 2018, respondent resent the 2016 Demand to appellants' Los Altos, California address.
   e. When respondent did not receive a response, it issued appellants an NPA on June 2, 2018. The NPA listed a demand penalty of $17,136, calculated as 25 percent of the tax of $68,544.
   f. On September 6, 2018, appellants filed their 2016 tax return late. The return reflected a tax of $51,022.

[1] The 2014 tax year is not at issue in this appeal but facts from the 2014 tax year are relevant to determine the correct imposition of the demand penalty for the 2016 tax year.

[2] Some notices and actions involve appellant-husband only, but that distinction does not affect our analysis on appeal. Therefore, for ease of reading, we use the term "appellants" throughout this Opinion when discussing the recipient of notices and who performed actions.

g. Respondent processed and accepted the return as filed. During processing, respondent reduced the demand penalty from $17,136 to $12,755.50, calculated as 25 percent of the tax of $51,022.

h. Appellants' 2016 taxes were ultimately paid in full.

i. Then, appellants filed a claim for refund to request an abatement of the 2016 demand penalty. Respondent denied the claim.

j. This timely appeal followed.

DISCUSSION

Issue 1: Whether respondent provided appellants with sufficient notice of its 2016 Demand.

Notices sent by respondent to a taxpayer's last known address are presumed to have been received. (R&TC, § 18416; *Appeal of Floria* (83-SBE-003) 1983 WL 15390.) R&TC section 18416 provides as follows: (a) unless expressly otherwise provided in this part, any notice may be given by first-class mail postage prepaid; (b) for purposes of this part, any notice mailed to a taxpayer shall be sufficient if mailed to the taxpayer's last known address; (c) the last known address shall be the address that appears on the taxpayer's last return filed with respondent, unless the taxpayer has provided to respondent clear and concise written or electronic notification of a different address, or respondent has an address it has reason to believe is the most current address for the taxpayer.

When a taxpayer contends that a notice is not sufficient, respondent must show that it mailed the notice to the taxpayer's last-known address by competent and persuasive evidence. (*Coleman v. Commissioner* (1990) 94 T.C. 82, 90.)[3] Respondent's knowledge of the taxpayer's last known address is relevant, rather than the taxpayer's actual most current address. (*Reding v. Commissioner*, T.C. Memo. 1990-278.)

Here, respondent mailed the 2016 Demand to the address on appellants' two most recent returns. Appellants filed their 2014 and 2015 tax returns on July 9, 2016, listing the Santa Clara address. Respondent mailed the 2016 Demand on March 20, 2018, to appellants' Santa Clara address. Appellants did not provide respondent with notification of a different address before the

[3] The California last known address statute is substantially similar to the federal statute, Internal Revenue Code section 6212; therefore, we consider law interpreting the federal statute to be persuasive. (*Douglas v. State* (1942) 48 Cal.App.2d 835, 838.)

2016 Demand was issued.[4] Thus, respondent sufficiently mailed the 2016 Demand to appellants' last known address.

On April 5, 2018, respondent received notification that the 2016 Demand sent to appellants was returned. However, a returned notice is still valid as long as respondent sent it to the last known address. (*Blocker v. Commissioner*, T.C. Memo. 2005-279.) R&TC section 18416 does not require remailing the notice, and nothing in the statute suggests that respondent would be obligated to take additional steps to effectuate delivery if the notice is returned. In addition, at the time respondent mailed the 2016 Demand on March 20, 2018, nothing in the record indicates that previous correspondence mailed by respondent to appellants was returned as undeliverable. (See *Stroupe v. Commissioner*, T.C. Memo. 1998-380 [if previous correspondence mailed by respondent to a taxpayer is returned as undeliverable before the notice is mailed, the taxing agency could reasonably be expected to conduct a further inquiry].)

Appellants focus their arguments on respondent's 2016 Demand that respondent resent on May 3, 2018, to appellants' Los Altos address. Appellants argue that they were not living there at the time and that respondent did not have proof that the Los Altos address was appellants' last known address at the time the 2016 Demand was resent on May 3, 2018.[5] However, as discussed above, respondent has already provided notice of the 2016 Demand by sending it to appellants' last known address (the Santa Clara address) on March 20, 2018. Also, respondent's resending of the 2016 Demand to the Los Altos address, after receiving indication that the Santa Clara address may no longer be valid, further confirms that respondent met its requirements under the law of sending the notice to appellants' last known address. Thus, we find that respondent provided appellants with sufficient notice.

Issue 2: Whether respondent properly imposed the demand penalty.

Respondent may impose a penalty on a taxpayer for 25 percent of the amount of tax assessed if the taxpayer fails to file a return or provide information upon a notice and demand

[4] Appellants state that they were not aware that they had to notify respondent of an address change.

[5] Appellants' Los Altos address was listed on their 2018 W-2s and is appellants' current address listed on their appeal letter. In addition, appellants admit that they "successfully received" the NPA that was issued on June 2, 2018, and sent to appellants' Los Altos address.

from respondent. (R&TC, § 19133.) The demand penalty is computed at 25 percent of the amount of the taxpayer's total tax liability, which is determined without regard to tax withholding and other payments. (*Appeal of Jones*, 2021-OTA-144P.)[6] Respondent may only impose a demand penalty if two criteria are met: (1) the taxpayer fails to timely 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)(1)-(2).) A "timely response" is defined as a response within the time period specified in the Demand or Request. (Cal. Code Regs., tit. 18, § 19133(c)(3).)

Here, respondent correctly computed the demand penalty of $12,755.50 for the 2016 tax year at 25 percent of appellants' tax liability of $51,022, which is determined without regard to tax withholding and other payments. Respondent also correctly imposed the demand penalty for the 2016 tax year. Appellants failed to timely respond to the 2016 Demand and also failed to timely respond to the 2014 Request, which resulted in the 2014 NPA. Thus, respondent's imposition of the demand penalty for the 2016 tax year satisfies the regulatory requirements. (See *Appeal of Jones*, *supra*.)

Issue 3: Whether appellants have established reasonable cause for failing to timely respond to respondent's 2016 Demand.

The demand penalty can be abated if the taxpayer establishes that his or her untimely response was due to reasonable cause and not willful neglect. (R&TC, § 19133.) The burden of proof is on the taxpayer to show reasonable cause by demonstrating that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Jones*, *supra*.) An analysis of reasonable cause requires examining the taxpayer's actions leading up to the failure to timely act, the timing of those actions, and whether they reflect ordinary business care and prudence such that an ordinarily intelligent and prudent businessperson would have acted similarly in the situation. (*Appeal of Moren*, 2019-OTA-176P.)

Appellants provide numerous arguments to abate the demand penalty. First, appellants argue that they were in the middle of building a house, which was a stressful and distracting

[6] OTA received and considered appellants' request for OTA to withdraw the precedential status of *Appeal of Jones*; however, *Appeal of Jones* will remain a precedential Opinion.

process. However, where personal difficulties simply caused appellants to sacrifice the timeliness of one aspect of their affairs to pursue other aspects, appellants must bear the consequences of that choice. (*Appeal of Orr* (68-SBE-010) 1968 WL 1640.)

Second, appellants argue that they relied on their accountant's advice that they could file their return later if they paid their taxes. However, there is no indication that appellants' accountant provided this advice concerning respondent's 2016 Demand. To the contrary, appellants submitted a letter from their accountant that references the late filing penalty, which is not at issue in this appeal.

Third, appellants assert they could not timely respond to the 2016 Demand because of appellant-husband's mom's illness. While significant illness or other personal difficulties may constitute reasonable cause, taxpayers must present credible and competent proof that they were continuously prevented from timely responding to a Demand despite the exercise of ordinary business care and prudence. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) Aside from their assertions, appellants have not submitted evidence to support their argument.[7] Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Moren*, *supra*.)

Finally, appellants argue under reasonable cause that "Even though the Demand was mailed on May 3, 2018 to Appellant's last known address, Appellant did not timely respond because he did not receive it." However, notices sent by respondent to a taxpayer's last known address are sufficient, even if not received by the taxpayer. (R&TC, § 18416; *U.S. v. Zolla* (9th Cir. 1984) 724 F.2d 808, 810.) Furthermore, aside from their assertions, appellants failed to submit evidence to suggest that they did not receive the 2016 Demand, such as by providing evidence to show that mail to their address was unreliable. Thus, OTA finds that appellants have not established reasonable cause.

[7] Appellants indicated that they took appellant-husband's mother to the hospital in 2016 and that the mother's health suffered while visiting appellants in 2017. It is unclear whether the mother's illness occurred during the time that appellants were supposed to respond to the 2016 Demand in 2018.

HOLDINGS

1. Respondent provided appellants with sufficient notice of its 2016 Demand.
2. Respondent properly imposed the demand penalty.
3. Appellants have not established reasonable cause for failing to timely respond to respondent's 2016 Demand.

DISPOSITION

OTA sustains respondent's action.

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Huy "Mike" Le
Administrative Law Judge

We concur:

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Natasha Ralston
Administrative Law Judge

DocuSigned by:
Josh Lambert
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Josh Lambert
Administrative Law Judge

Date Issued: 7/6/2022