

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
C. EDWARDS

) OTA Case No. 22039830
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OPINION

Representing the Parties:

For Appellant: C. Edwards

For Respondent: Josh Ricafort, Tax Counsel

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) sections 19324 and 19331, C. Edwards (appellant) appeals the denial by respondent Franchise Tax Board (FTB) of appellant’s claim for refund of \$26,436.88¹ for the 2016 tax year.

Appellant waived the right to an oral hearing; therefore, Office of Tax Appeals (OTA) decides the matter based on the written record.

ISSUES

1. Whether appellant has shown reasonable cause for the late filing of her 2016 California tax return.
2. Whether appellant has established grounds to abate the notice and demand penalty (demand penalty).
3. Whether appellant has established grounds to abate the filing enforcement cost recovery fee (filing enforcement fee).
4. Whether appellant is entitled to interest abatement.

¹ Of \$26,436.88, \$10,224.75 is related to the late-filing penalty, \$6,161 is related to the notice and demand penalty, \$97 is related to the filing enforcement cost recovery fee, and the remainder is interest. FTB formally denied the late-filing penalty, and the remaining amount in appellant’s refund claim arose from FTB’s deemed denial under R&TC section 19331.

FACTUAL FINDINGS

1. Appellant did not file a timely California tax return for the 2016 tax year.
2. FTB received information from a third-party source that appellant earned income attributable to proceeds from the sale of her California property. FTB determined that appellant had earned sufficient income for the 2016 tax year to prompt a filing requirement but had not filed a return.
3. FTB issued appellant a Demand for Tax Return (Demand), which required that, within 30 days, she file or provide evidence that she already filed her 2016 California tax return, or respond with a completed questionnaire (FTB Form 4602 ENS) showing that she had no filing requirement for the 2016 tax year. The Demand notified appellant that if she did not timely respond to the Demand in the manner prescribed, FTB would assess a demand penalty, a late-filing penalty, a filing enforcement fee, and interest.
4. When FTB did not receive a response to the Demand, FTB issued appellant a Notice of Proposed Assessment (NPA). The NPA estimated appellant's income to exceed the 2016 filing threshold based on third party information, and proposed tax, a late-filing penalty, a demand penalty, and a filing enforcement fee, plus applicable interest.
5. Appellant untimely filed her return on February 1, 2021, and paid the amount due on February 16, 2021. FTB accepted the return as filed. FTB increased the late-filing penalty and interest to reflect appellant's larger tax liability as stated in her return.²
6. Appellant timely filed a claim for refund on August 15, 2021, requesting penalty abatement.
7. FTB partially denied the claim on February 2, 2022.³
8. This timely appeal followed.
9. As relevant to this appeal, FTB previously issued appellant an NPA for the 2015 tax year following appellant's failure to respond to a Request for Tax Return (Request). FTB recorded a call from appellant that provided sufficient information for FTB to withdraw its NPA for the 2015 tax year.

² FTB did not increase the demand penalty nor the filing enforcement fee (set at \$97 for the 2016 tax year).

³ FTB did not respond to the claim for refund concerning the demand penalty. In situations where a refund claim has been filed, and FTB fails to issue a notice of claim denial after six months, the taxpayer may appeal the deemed denial to OTA. (R&TC, § 19331). More than six months have passed since August 15, 2021; thus, appellant properly appeals the deemed denial of the claim for refund of the demand penalty.

DISCUSSION

Issue 1: Whether appellant has shown reasonable cause for the late filing of her 2016 California tax return.

Absent an extension, a taxpayer who files on a calendar year basis is generally required to file their income tax returns by April 15 of the following year. (R&TC, § 18566.) R&TC section 19131 requires FTB to impose a late-filing penalty when a taxpayer does not file their return on or before its due date, unless the taxpayer shows that the late filing was due to reasonable cause, and not due to willful neglect. When FTB imposes a late-filing penalty, the law presumes that it is correct, and the burden of proof is on the taxpayer to show that reasonable cause exists to abate the penalty. (*Appeal of Cremel and Koepfel*, 2021-OTA-222P.) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of Gorin*, 2020-OTA-018P.) Appellant raises no argument that the penalty was imposed in error, and OTA finds that FTB correctly imposed the penalty after appellant untimely filed her return.

The standard of reasonable cause requires the taxpayer to establish that the failure to timely file occurred despite the exercise of ordinary business care and prudence. (*U.S. v. Boyle* (1985) 469 U.S. 241, 246; see also *Appeal of Cremel and Koepfel*, *supra*.) Even if the taxpayer is unaware of a filing requirement, ignorance of the law is not an excuse for failing to file a timely return. (*Appeal of Cremel and Koepfel*, *supra*.) Appellant contends that the following circumstances demonstrate reasonable cause:

- (1) Prior to his death, appellant's husband prepared all tax returns and handled all tax matters;
- (2) Due to the complexity of the tax laws surrounding the sale and purchase of homes, she was unaware she had a filing requirement until FTB notified her;
- (3) Appellant was elderly and a widow; and
- (4) Appellant received no such notices from the IRS.

Unfortunately, the foregoing assertions are unsupported and do not support reasonable cause. Appellant does not provide any evidence to show that she was unable to file the return in the absence of her husband or as the result of advanced age. (See *Appeal of Head and Feliciano*, 2020-OTA-127P, at p. 10 [requiring evidence that appellant-husband was incapacitated and appellant-wife was unable to file].) Further, each taxpayer has a non-delegable obligation to file a tax return by the due date. (See *U.S. v. Boyle*, *supra*.) Failure to acquaint oneself with the

requirements of California tax law does not constitute ordinary care and cannot excuse failure to comply with the statutory requirement of timely filing a return. (*Appeal of Cremel and Koeppeel, supra.*) Finally, lack of notice from FTB or the IRS does not negate appellant's duty of ordinary business prudence. (*Appeal of Scanlon, 2018-OTA-057P.*) Thus, FTB properly imposed the late-filing penalty and OTA has no basis to abate it.

Issue 2: Whether appellant has established grounds to abate the demand penalty.

R&TC section 19133 imposes a penalty when a taxpayer fails to file a return or provide information upon FTB's notice and demand to do so, unless it is shown that the failure was due to reasonable cause and not willful neglect. A demand penalty is properly imposed if two criteria are met: (1) the taxpayer fails to respond to a current Demand; and (2) at any time during the preceding four tax years, FTB issued an NPA following the taxpayer's failure to timely respond to a Request or a Demand. (Cal. Code Regs, tit. 18, (Regulation) § 19133(b)(1)-(2); *Appeal of Jones, 2021-OTA-144P.*)

The first requirement is met because FTB issued a Demand for the 2016 tax year but did not receive a timely response from appellant. The second requirement is also met because FTB issued an NPA following the taxpayer's failure to timely respond to a prior Request for the 2015 tax year. Although FTB ultimately withdrew the NPA for the 2015 tax year, Regulation section 19133 imposes the demand penalty only on repeat non-filers, i.e., taxpayers who received an NPA after receiving and failing to respond to a Request or Demand within the preceding four taxable years. (*Appeal of Jones, supra.*) As appellant was non-filer in 2015, and again in 2016, i.e., a repeat non-filer, the demand penalty is warranted.

Appellant provides no specific argument establishing reasonable cause for her failure to timely respond to the Demand, and most of her contentions address her failure to file a tax return rather than her failure to respond to the 2016 Demand. That appellant was elderly and a widow does not excuse failure to timely respond to a Request or Demand because these are not allegations that appellant's failure to respond occurred despite ordinary business care or prudence, much less proof that the failure was due to reasonable cause. (See *Appeal of Wright Capital Holdings LLC, 2019-OTA-219P* [appellant did not exercise reasonable cause where it failed to respond to a Demand].) Thus, FTB properly imposed the demand penalty and OTA has no basis to abate it.

Issue 3: Whether appellant has established grounds to abate the filing enforcement fee.

R&TC section 19254(a)(2) provides that if a person fails or refuses to make and file a tax return within 25 days after formal legal demand to file the tax return is mailed to that person, FTB must impose a filing enforcement fee (currently set at \$97 for individuals).⁴ Once properly imposed, the statute provides no grounds upon which the fee may be abated. (R&TC, § 19254; see *Appeal of Jones, supra.*)

Here, FTB informed appellant in the 2016 Demand that she may be subject to the filing enforcement fee if she did not file a tax return. However, appellant did not file her return within the time period prescribed by the 2016 Demand. Therefore, FTB properly imposed the filing enforcement fee and OTA has no basis to abate it.

Issue 4: Whether appellant is entitled to interest abatement.

Imposing interest is mandatory, and FTB cannot abate interest except where authorized by law. (R&TC, § 19101; *Appeal of Balch*, 2018-OTA-159P.) Interest is not a penalty; it is compensation for the use of money. (*Appeal of Balch, supra.*) Interest accrues on a deficiency assessment regardless of the reason for the assessment. (*Ibid.*) Generally, to obtain relief from interest, taxpayers must qualify under R&TC section 19104, 19112, or 21012. (*Ibid.*) Appellant makes no specific argument regarding interest. Nor does she allege that any of the three statutory provisions for interest abatement apply to the facts of this case, and OTA concludes based on the evidence of the record that none of these statutory provisions apply. Therefore, FTB properly imposed interest and OTA has no basis to abate it.


⁴ FTB annually adjusts the filing enforcement fee to reflect actual costs as reflected in the annual Budget Act.

HOLDINGS


1. Appellant has not shown reasonable cause for the late filing of her 2016 California tax return.
2. Appellant has not established grounds to abate the demand penalty.
3. Appellant has not established grounds to abate the filing enforcement fee.
4. Appellant is not entitled to interest abatement.

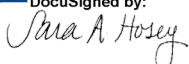
DISPOSITION

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

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 Asaf Kletter
 Administrative Law Judge

We concur:

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 Administrative Law Judge

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 Sara A. Hosey
 Administrative Law Judge

Date Issued: 9/19/2022