

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 220410278
A. VANKAYALA AND)
S. VANKAYALA)
_____)

OPINION

Representing the Parties:

For Appellants: A. Vankayala
S. Vankayala

For Respondent: Eric R. Brown, Tax Counsel III

For Office of Tax Appeals: Steven Kim, Tax Counsel III

N. RALSTON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, A. Vankayala and S. Vankayala (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants’ claim for refund of \$2,396 for the 2017 tax year.

Appellants elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.1.)

Office of Tax Appeals (OTA) Administrative Law Judge Natasha Ralston held a virtual hearing for this matter on April 21, 2023. At the conclusion of the hearing, the record was closed and this matter was submitted for an opinion.

ISSUES

1. Whether appellants have established reasonable cause to abate the demand penalty for the 2017 tax year.
2. Whether appellants have established that the collection cost recovery should be abated.
3. Whether appellants have established that interest should be abated.

FACTUAL FINDINGS

1. Appellants did not file a 2017 California Income Tax Return by the due date of the return.
2. Respondent received information showing appellants received sufficient income in 2017 to require appellants to file a California tax return for 2017.¹ On September 24, 2019, respondent issued S. Vankayala a Demand for Tax Return (Demand) requesting a response by October 30, 2019. Appellants did not respond to the Demand.
3. On February 27, 2020, respondent issued appellants a Notice of Proposed Assessment (NPA) proposing \$2,484 in tax, a \$621 late filing penalty, a \$2,888 demand penalty,² a \$93 filing enforcement fee, plus applicable interest.
4. Appellants did not file a timely protest to the NPA.
5. Respondent issued appellants additional tax due notices, on July 27, 2020, and September 18, 2020. Both notices state that respondent may take collection action against appellants if the balance due was not paid.
6. On September 24, 2020, appellants informed respondent that they had not filed a 2017 California tax return because they were waiting for some documents and for their accountant. Appellants stated they expected a refund when they filed their return and requested FTB's advice.
7. On September 25, 2020, respondent advised appellants to file the 2017 return as soon as possible in order to avoid possible collection action.
8. On October 23, 2020, respondent issued appellants a Final Notice Before Levy and Lien.
9. On February 25, 2021, respondent transferred a credit of \$3,659.30 from the 2018 tax year to 2017. On April 5, 2021, respondent received a payment of \$3,343.27 from appellants' bank pursuant to an Order to Withhold Personal Income Taxes.

¹ The information showed appellants received wages, interest income, and 1099-B (*Proceeds From Broker and Barter Exchange Transactions*) income.

² Appellants were also issued a Request for Tax Return and an NPA for the 2016 tax year, on May 1, 2018, and September 24, 2018, respectively.

10. On May 6, 2021, appellants filed a 2017 California Resident Income Tax Return reporting \$8,113 in tax and \$9,068 of withholdings, resulting in an overpayment of \$955.³
11. On May 15, 2021, respondent issued appellants a refund of \$5,568.80.
12. Appellants filed a claim for refund, requesting a refund of \$2,395.53 for 2017.⁴ Appellants disagreed with the penalty and fees because they paid more tax than their tax liability and were expecting a refund.
13. On January 26, 2022, respondent denied the claim for refund because appellants did not establish reasonable cause.
14. Appellants filed this timely appeal.

DISCUSSION

Issue 1: Whether appellants have established reasonable cause to abate the demand penalty for the 2017 tax year.

R&TC section 19133 imposes a penalty when a taxpayer fails or refuses to make and file a return upon notice and demand by respondent, unless the failure is due to reasonable cause and not willful neglect. Respondent imposes 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 the taxpayer an NPA following the taxpayer's failure to timely respond to a Request or Demand. (Cal. Code Regs., tit. 18, § 19133(b).)

Here, respondent issued appellants the Demand on September 24, 2019, and appellants did not submit a timely response. Respondent also issued appellants an NPA for the 2016 tax year on September 24, 2018, after appellants failed to timely respond to the May 1, 2018 Request for Tax Return. Thus, FTB properly imposed the demand penalty.

A taxpayer may establish reasonable cause by showing that the failure to timely respond to a demand occurred despite the exercise of ordinary business care. (*Appeal of Jones*, 2021-OTA-144P.) The taxpayer's reason for failing to respond to the Demand must be such that an ordinary and prudent businessperson would have acted similarly under the circumstances.

³ Respondent reduced the demand penalty to \$2,028.25 based on the tax amount appellants reported.

⁴ This amount consists of the \$2,028.25 demand penalty, a \$316.00 collection cost fee, and \$51.28 in interest.

(*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) In *United States v. Boyle* (1985) 469 U.S. 241, the United States Supreme Court held that a taxpayer's reliance on an agent is not reasonable cause for a late filing. (See *U. S. v. Boyle* (1985) 469 U.S. 241, 252; *Appeal of Summit Hosting LLC*, 2021-OTA-216P.) However, the Court observed that reasonable cause may exist in situations where a taxpayer reasonably relies on the erroneous advice of an accountant or attorney with respect to substantive matters of tax law or whether a return needs to be filed in the first place. (*U.S. v. Boyle, supra.*; *Appeal of Summit Hosting LLC, supra.*)

Appellants contend they had reasonable cause for failing to timely respond to the Demand because of several unforeseen circumstances. Appellants assert that they received an extension to file and were waiting for Canadian tax documents. Appellants state that they had miscommunication problems with their accountant and that their accountant was unable to electronically file their return. Appellants assert that, because they would be receiving a refund after they filed their return, their accountant assured them everything was fine. Appellants also state they travelled to India in January 2021 because A. Vankayala's father passed away, and that they had difficulty communicating with their accountant while abroad. Finally, appellants assert that they were delayed by the COVID-19 pandemic.

Here, appellants were required to respond to the Demand by October 30, 2019. Appellants failed to timely respond to the Demand and also failed to respond to the February 27, 2020 NPA, and the July 27, 2020 balance due notice. Appellants did not contact respondent until September 24, 2020, a year after the Demand was issued. An ordinary and prudent taxpayer would have timely responded to the Demand, especially given appellants' inability to contact their accountant. Additionally, the COVID-19 pandemic did not begin until early 2020, and appellants did not travel to India until January 2021. Thus, neither the COVID-19 pandemic nor their trip to India, would have affected appellants' ability to timely respond to the Demand. Furthermore, appellants have not established that their accountant provided advice on substantive matters of tax law or whether a return needed to be filed in the first place. As such, appellants' reliance on their accountant does not constitute reasonable cause. (See *Appeal of Summit Hosting LLC, supra.*)

Accordingly, appellants have failed to establish reasonable cause to abate the demand penalty.

Issue 2: Whether appellants have established that the collection cost recovery should be abated.

R&TC section 19254(a)(1) requires respondent to impose a collection cost recovery fee when respondent notifies a taxpayer that the continued failure to pay an amount due may result in collection action, including the imposition of a collection cost recovery fee, and the taxpayer fails to timely pay the amount due in response to the notice. The amount of the fee is adjusted annually to reflect actual enforcement costs. (R&TC, § 19254(b).) There is no reasonable cause defense to the imposition of the fee; thus, OTA's inquiry is limited to determining whether respondent complied with the statutory notice requirements for imposing the collection cost recovery fee.

Here, respondent issued appellants two separate notices, on July 27, 2020, and September 28, 2020, informing appellants that failure to pay the balance due may result in collection action. Appellants failed to pay the liability after receiving notice that continued failure may result in collection action. Thus, the imposition of the collection cost recovery fee was correct.

Issue 3: Whether appellants have established that interest should be abated.

Tax is due on the original due date of the return without regard to any filing extension. (R&TC, § 19001.) If a taxpayer does not pay the tax by the original due date of the tax return, or if FTB assesses additional tax, the law provides for charging interest at the adjusted annual rate established on the balance due. (R&TC, § 19101.) The imposition of 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 sections 19104,⁵ 19112,⁶ or 21012.⁷ (*Ibid*.)

⁵ Interest must be attributable in whole or in part to any unreasonable error or delay by an officer or employee of respondent, acting in his or her official capacity, in performing a ministerial or managerial act.

⁶ Taxpayer must demonstrate an inability to pay interest solely because of extreme financial hardship caused by significant disability or other catastrophic circumstance.

⁷ Taxpayer's failure to make a timely payment was due to a reasonable reliance on the written advice of a legal ruling by the chief counsel under certain conditions.

Appellants do not argue that any of these statutory provisions apply here, nor does the record contain any evidence that the provisions should apply. Therefore, respondent properly imposed interest and OTA has no basis to abate the interest.

HOLDINGS

1. Appellants have not established reasonable cause to abate the demand penalty.
2. Appellants have not established that the collection cost recovery fee should be abated.
3. Appellants have not established that interest should be abated.

DISPOSITION

Respondent's action denying appellants' claim for refund is sustained.

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Natasha Ralston
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Natasha Ralston
Administrative Law Judge

Date Issued: 7/19/2023