

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 21078158
D. STROUD)
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OPINION

Representing the Parties:

For Appellant: D. Stroud
For Respondent: Christopher M. Cook, Tax Counsel
For Office of Tax Appeals: Nguyen Dang, Tax Counsel III

R. TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, D. Stroud (appellant) appeals an action by the Franchise Tax Board (respondent) proposing an assessment of the demand penalty in the amount of \$6,573.75, a filing enforcement fee of \$97.00 and applicable interest, for the 2018 tax year.

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

ISSUE¹

Whether appellant has shown error in respondent’s proposed assessment of the demand penalty for the 2018 tax year.

FACTUAL FINDINGS

1. Appellant did not file a timely California income tax return for the 2018 tax year.
2. Respondent received information that appellant had earned income in 2018, so by letter dated July 27, 2020, respondent issued a Demand for Tax Return (Demand) requiring

¹ Appellant makes no separate arguments for the abatement of the filing enforcement fee and the abatement of interest. OTA also finds no basis in the record to support abatement of these assessments and will not discuss them further.

appellant to file an income tax return for the 2018 tax year or explain why he was not required to file such a return.²

3. Appellant failed to respond to the Demand.
4. Consequently, respondent estimated appellant's tax liability using third-party information returns (e.g., IRS Form W-2), a single filing status, and the standard deduction.
5. Respondent thereafter issued to appellant a Notice of Proposed Assessment (NPA) for the 2018 tax year for additional tax, penalties, a filing enforcement fee, and applicable interest.
6. Appellant protested the NPA but provided no information or evidence to demonstrate error in respondent's proposed assessment. Consequently, respondent issued a Notice of Action affirming its proposed assessment.
7. This timely appeal followed.
8. During the appeal, appellant filed his 2018 California income tax return. Respondent accepted the return and made corresponding adjustments to its proposed assessment. The remaining issue in dispute is the demand penalty in the amount of \$6,573.75.

DISCUSSION

Respondent may impose a penalty when a taxpayer fails to file a return or provide information upon respondent's notice and demand to do so, unless it is shown that the failure was due to reasonable cause and not willful neglect. (R&TC, § 19133.) A demand penalty is properly imposed if two criteria are met: (1) the taxpayer fails to timely respond to a current Demand in the manner prescribed; and (2) respondent proposed an assessment of tax under the authority of R&TC section 19087(a), after the taxpayer failed to timely respond to a Request for Tax Return or a Demand in the manner prescribed, for any taxable year within the four-taxable-year period immediately preceding the taxable year for which the current Demand is issued. (Cal. Code Regs, tit. 18, § 19133(b)(1)-(2).)

Here, appellant failed to respond to the Demand for 2018. In addition, respondent issued Demands for the 2014 and 2017 tax years and issued NPAs for each tax year after appellant did not timely respond to those Demands. Therefore, the conditions under California Code of

² Respondent also issued Demands for the 2014 and 2017 tax years and NPAs for those tax years after appellant did not respond to the Demands.

Regulations, title 18, section 19133 are met, and respondent properly imposed the demand penalty. (See *Appeal of Jones*, 2021-OTA-144P.)

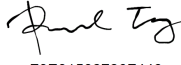
Appellant provides no argument that would excuse his failure to respond to the Demand for 2018 and provides no other argument for abatement of the demand penalty.³ OTA also finds no reason in the record to abate the demand penalty. Accordingly, OTA finds no error in respondent’s proposed assessment.

HOLDING

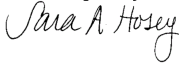
Appellant has not shown error in respondent’s proposed assessment of the demand penalty for the 2018 tax year.

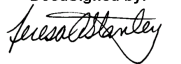
DISPOSITION

Respondent’s action, as revised during this appeal, is sustained in full.

DocuSigned by:

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Richard Tay
Administrative Law Judge

We concur:

DocuSigned by:

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Sara A. Hosey
Administrative Law Judge

DocuSigned by:

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Teresa A. Stanley
Administrative Law Judge

Date Issued: 11/15/2023

³ On appeal, appellant made arguments regarding his filing status and additional deductions; however, appellant made no specific arguments addressing respondent’s imposition of the demand penalty.