

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 220310041  
H. RAHMAN AND )  
A. ENGSTROM )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: H. Rahman and A. Engstrom  
For Respondent: Camille Dixon, Attorney

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, H. Rahman and A. Engstrom (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$14,592.50 plus interest for the 2017 tax year.

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

**ISSUES**

1. Whether FTB incorrectly imposed the notice and demand (demand) penalty.
2. Whether appellants have shown they are entitled to abatement of interest.

**FACTUAL FINDINGS**

1. Appellants did not timely file a 2017 California income tax return.
2. On September 19, 2019, FTB issued a Demand for Tax Return (Demand) to appellant H. Rahman based on wage income reported by H. Rahman’s employers. The Demand required H. Rahman to respond by October 23, 2019, and stated that failure to respond would result in FTB’s proposed assessment of tax and the imposition of a demand penalty.
3. H. Rahman failed to respond to the Demand. On November 27, 2019, FTB issued a

- Notice of Proposed Assessment (NPA), proposing to assess tax, a late filing penalty, a demand penalty, and a filing enforcement fee, plus interest.
4. FTB issued multiple notices to H. Rahman after issuing the NPA, including a State Income Tax Balance Due Notice, Income Tax Due Notice, Final Notice Before Levy and Lien, Intent to Record a Notice of State Tax Lien, Notice of State Tax Lien, Earnings Withholding Orders for Taxes, and an Intent to Offset Federal Payments.
  5. On May 15, 2021, appellants untimely filed their joint 2017 California income tax return, claiming an overpayment of tax.
  6. FTB accepted the return and on June 14, 2021, issued a Notice of Tax Return Change – Revised Balance, revising appellants’ tax liability, and reducing the demand penalty and applicable interest. FTB abated the late filing penalty and filing enforcement fee.
  7. FTB applied a tax year credit transfer from appellants’ 2018 tax year account to a portion of their outstanding liability for the 2017 tax year. FTB levied appellants’ bank account to satisfy the remaining balance due for the 2017 tax year.
  8. Appellants filed a Reasonable Cause Claim for Refund, FTB Form 2917, requesting abatement of the demand penalty. FTB denied the claim for refund and appellants timely appealed.

### DISCUSSION

#### Issue 1: Whether FTB incorrectly imposed the demand penalty.

R&TC section 19133 imposes a penalty when a taxpayer fails or refuses to make and file a return upon notice and demand by FTB, unless the failure is due to reasonable cause and not willful neglect. FTB 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, FTB 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, FTB issued appellant H. Rahman the Demand on September 19, 2019, and appellants did not submit a timely response. FTB also issued appellant H. Rahman an NPA for the 2016 tax year on April 23, 2018, after appellants failed to timely respond to a February 20, 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 a Demand must be such that an ordinary and prudent businessperson would have acted similarly under the circumstances. (*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. (*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 argue that they had business difficulties and relied on their tax preparer who advised them to wait to file their California income tax return until they obtained the necessary information, i.e., corrected Form W-2s. However, appellants have not submitted any evidence in support of this contention, such as communications between their tax preparer as to what information was given and received. Even with such evidence, a taxpayer's reliance on an agent, such as an accountant or a tax attorney, to file the return by the due date, to respond on the taxpayer's behalf to a Demand from FTB, and/or to reply to a request for information by FTB, is not reasonable cause. (*Appeal of Summit Hosting LLC, supra.*)

Furthermore, the fact that tax information is lost, lacking, inaccurate, or difficult to obtain is insufficient to meet the taxpayer's burden of establishing reasonable cause. (*Appeal of Moren*, 2019-OTA-176P.) A taxpayer must establish that he or she could not have acquired the information necessary to make an estimate of his tax liability. (*Ibid.*) An assertion that records were difficult to obtain without any substantiation of efforts made to retrieve those records or otherwise showing that they were unobtainable is not sufficient to show reasonable cause. (*Ibid.*)

Here, appellants have not submitted evidence, despite the additional time provided by Office of Tax Appeals (OTA) during the appeals process, of any efforts to obtain the information necessary to timely file their 2017 California income tax return. Appellants could have sought an extension to respond to the Demand or filed a return based on their best information and thereafter filed an amended return later, but no evidence exists of such actions. Moreover, appellants have not shown that the Form W-2 amounts are incorrect, as the Form W-2 amounts

noted in appellants' late-filed 2017 California income tax return appear to be the same amounts on which FTB based its November 27, 2019 NPA.

However, illness or other personal difficulties may be considered reasonable cause if the taxpayer presents credible and competent proof that they were continuously prevented from filing a tax return. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) When a taxpayer alleges reasonable cause based on an incapacity due to illness or the illness of an immediate family member, the duration of the incapacity must approximate that of the tax obligation deadline. (*Ibid.*) If the difficulties simply caused the taxpayer to sacrifice the timeliness of one aspect of their affairs to pursue other aspects, the taxpayer must bear the consequences of that choice. (*Ibid.*)

Appellants contend they were struggling with several difficult personal circumstances in conjunction with a failing business. While OTA sympathizes with the difficult business and personal circumstances, appellants' documentation does not establish that both appellants were continuously prevented from timely filing their 2017 California return and responding to the Demand. (*Appeal of Head and Feliciano, supra.*) It is well established that each taxpayer has a personal, non-delegable obligation to file a tax return by the due date. (*U.S. v. Boyle, supra.*) Appellants' response to the Demand was required by October 23, 2019, yet appellants did not reply until the filing of their 2017 tax year return on May 15, 2021, nearly 18 months later. Appellants have not provided evidence to support their contention that their personal difficulties continuously prevented both of them from timely filing their tax return. The evidence provided in support of appellants' reasonable cause arguments does not support continuous inability by both parties to respond or file a return.

Based on the above, appellants have not shown error in FTB's imposition of the demand penalty for the 2017 tax year.

Issue 2: Whether appellants have shown they are entitled to 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.) Imposing interest is mandatory; it is not a penalty, but it is compensation for appellants' use of money after it should have been paid to the state. (*Appeal of Moy*, 2019-OTA-057P.) Generally, to obtain relief from interest, taxpayers must qualify under

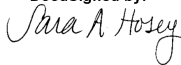
R&TC section 19104, 19112, or 2012.<sup>1</sup> (*Ibid.*) Appellants do not allege that any of the three statutory provisions for interest abatement apply to the facts of this case, and OTA concludes based on the written record that none of these statutory provisions apply. Therefore, FTB properly imposed interest and OTA has no basis to abate it.

### HOLDINGS

1. FTB properly imposed the demand penalty.
2. Appellants have not shown they are entitled to abatement of interest.

### DISPOSITION

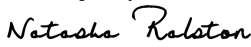
FTB's action is sustained in full.

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Sara A. Hosey  
Administrative Law Judge

We concur:

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Natasha Ralston  
Administrative Law Judge

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Asaf Kletter  
Administrative Law Judge

Date Issued: 11/16/2023

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<sup>1</sup> Under R&TC section 19104, FTB 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 FTB employee. Under R&TC section 19112, FTB may waive interest for any period for which FTB determines that an individual has extreme financial hardship. OTA does not have authority to review extreme financial hardship determinations. (See *Appeal of Moy, supra.*) Under R&TC section 21012, an individual may be relieved from interest if that person reasonably relies on FTB's written advice in response to a written request.