

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 230613493
E. MARSHALL AND)
M. MARSHALL)
_____)

OPINION

Representing the Parties:

For Appellants: E. Marshall and M. Marshall

For Respondent: Arathi Ramalingam, Attorney

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, E. Marshall and M. Marshall (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$636.75 for the 2020 tax year.

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

ISSUE

Whether appellants have established a basis to abate the notice and demand (demand) penalty.

FACTUAL FINDINGS

1. FTB had no record of receiving a timely 2020 tax return from appellants.
2. FTB received information that appellant M. Marshall may have earned income that required her to file a California tax return during 2020.
3. FTB’s records indicate that appellants made a payment of \$734 on May 10, 2021.
4. On October 11, 2022, FTB sent appellant M. Marshall a Demand for Tax Return (Demand) requiring her by November 16, 2022, to either file a 2020 tax return, provide evidence that she already filed a return, or explain why she did not have a filing requirement.

5. When appellant M. Marshall did not respond to the Demand, FTB issued a Notice of Proposed Assessment (NPA) on December 16, 2022, which estimated her income and proposed an assessment of tax, a late filing penalty, a demand penalty, a filing enforcement fee, and interest.¹
6. On February 13, 2023, appellants untimely filed a joint California Resident Income Tax Return, reporting total tax of \$3,422. FTB accepted the return and issued a Notice of Tax Return Change – Revised Balance on February 21, 2023. The notice revised appellants' tax to the amount reported on the return, abated the late filing penalty and filing enforcement fee, but continued to propose the demand penalty.
7. Appellants paid the amount due and filed a claim for refund for the demand penalty, which FTB denied.
8. This timely appeal followed.

DISCUSSION

R&TC section 19133 provides that if taxpayers fail to file a return upon notice and demand by FTB, then FTB may impose a penalty of 25 percent of the amount of tax assessed pursuant to R&TC section 19087, unless the failure is due to reasonable cause and not willful neglect.² When FTB imposes a penalty, the law presumes that the penalty is correct. (*Appeal of Xie*, 2018-OTA-076P.)

Appellants contend that they filed their return in 2021 with a check for \$734 that FTB cashed. FTB's records indicate that a payment was received for \$734 on May 10, 2021. However, a payment to FTB does not establish when a return was filed or that appellants timely responded to the Demand. Taxpayers must provide evidence, such as a registered or certified mail receipt, to show that a return was filed on a date different from the date indicated by FTB's records. (See *Appeal of Fisher*, 2022-OTA-337P.) Here, appellants provide no evidence to

¹ FTB previously issued a Request for Tax Return and NPA to appellant M. Marshall for the 2017 tax year.

² California Code of Regulations, title 18, section 19133 provides that for individuals, the demand penalty will only be imposed if the following two conditions are satisfied: (1) the taxpayers fail to timely respond to a current Demand in the manner prescribed, and (2) FTB has proposed an assessment of tax under the authority of R&TC section 19087(a), after the taxpayers failed to timely respond to a Request for Tax Return or a Demand in the manner prescribed, for any taxable year that is within the four-taxable-year period immediately preceding the taxable year for which the current Demand is issued. The requirements of this regulation have been met because appellants failed to respond to the Demand for the 2020 tax year and FTB previously issued a Request for Tax Return and NPA to appellant M. Marshall for the 2017 tax year.

show that a return was mailed to FTB at an earlier date. Therefore, appellants have not shown that the return was filed prior to February 13, 2023, as indicated by FTB's records. Appellants also have not provided evidence to show that they timely responded to the Demand.

Appellants contend that they did not hear from FTB until 2023 when they received notice that their return was not filed and that they owed a penalty. The "last-known address" shall be the address that appears on the taxpayers' last return filed with FTB, unless the taxpayers have provided to FTB clear and concise written or electronic notification of a different address, or FTB has an address that it has reason to believe is the most current address for the taxpayers. (R&TC, § 18416(c).) It is well-established that notices sent by FTB to the taxpayers' last-known address are sufficient, even if not received by the taxpayers. (R&TC, § 18416(b); *Appeal of Goodwin* (97-SBE-003) 1997 WL 258474.) The Demand was sent to what appears to be appellants' last-known address, which is the same address FTB listed on a 2017 NPA sent to appellant M. Marshall, and as listed on appellants' 2020 return. Appellants also listed the same address in correspondence with FTB and the Office of Tax Appeals. Furthermore, appellants have provided no evidence to show that the Demand was not sent to their last-known address. Therefore, appellants' contentions do not show that the demand penalty should be abated.

HOLDING

Appellants have not established a basis to abate the demand penalty.

DISPOSITION

FTB’s action denying appellants’ claim for refund is sustained.

Signed by:
Josh Lambert
CB1F7DA37831416...

Josh Lambert
Administrative Law Judge

We concur:

DocuSigned by:
Asaf Kletter
D17AEDDCAAB045B...

Asaf Kletter
Administrative Law Judge

Signed by:
Veronica I. Long
32D46B0C49C949F...

Veronica I. Long
Administrative Law Judge

Date Issued: 10/28/2024