

In the Matter of the Appeal of: ) OTA Case No. 230513286  
 )  
**G. SARKIN AND** )  
**S. JAIN** )  
 )  
 )  
 )

1. Appellants did not timely file a California income tax return for 2017. FTB received information that G. Sarkin earned wages during the 2017 tax year requiring G. Sarkin to file a return.

2. On October 26, 2020, FTB issued to G. Sarkin a Demand for Tax Return (Demand) for the 2017 tax year that requested that G. Sarkin file a return if required or explain that a return was already filed by November 25, 2020.<sup>1</sup>
3. When G. Sarkin did not respond to the Demand, FTB issued to G. Sarkin a Notice of Proposed Assessment (NPA) that proposed an assessment of additional tax, a late filing penalty, a demand penalty, and applicable interest.
4. On March 15, 2021, appellants filed a joint 2017 California Resident Income Tax Return.
5. FTB processed the return and issued a Notice of Tax Return Change – Revised Balance imposing a revised late filing penalty of \$1,876.25, a demand penalty of \$2,706.50, and interest.<sup>2</sup>
6. Appellants paid the balance due on their account and filed a claim for refund, which FTB denied.
7. This timely appeal followed.

### DISCUSSION

#### Issue 1: Whether appellants have established a basis to abate the late filing penalty.

California imposes a penalty for the failure to file a return on or before the due date, unless it is shown that the late filing was due to reasonable cause and not due to willful neglect. (R&TC, § 19131(a).) When FTB imposes a penalty, the law presumes that the penalty was correctly imposed, and the burden of proof is on the taxpayers to establish otherwise. (*Appeal of Fisher*, 2022-OTA-337P.) To establish reasonable cause, taxpayers must show that the failure to file a timely return occurred despite their exercise of ordinary business care and prudence, or such a cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) Unless the taxpayers provide credible and competent evidence supporting a claim of reasonable cause, the late filing penalty cannot be abated. (*Appeal of Xie*, 2018-OTA-076P.)

---

<sup>1</sup> In addition, FTB previously issued to G. Sarkin a 2015 Request for Tax Return on April 4, 2017, and a 2015 Notice of Proposed Assessment (NPA) on June 5, 2017. FTB also previously issued to G. Sarkin a 2016 Demand on March 20, 2018, and a 2016 NPA on May 21, 2018.

<sup>2</sup> The NPA indicates a \$97 filing enforcement fee. However, FTB's Tax Year Current Values Display for the 2018 tax year does not reflect the imposition of the filing enforcement fee. Therefore, it appears that the fee was removed. The Current Values Display also indicates an installment agreement fee of \$34, which is not in dispute and will not be addressed.

Here, it is undisputed that appellants did not timely file their 2017 tax return since the return was filed on March 15, 2021. Accordingly, FTB properly imposed the late filing penalty. On appeal, appellants do not dispute that they failed to timely file a return but rather seek abatement of the late filing penalty based on various reasons, as described below.

Appellants argue that they encountered difficulties in timely filing their 2017 tax return because they had to care for a sick family member who was living with them and was reported as a dependent. Appellants also provide evidence as to the treatment of the sick family member. Illness or other personal difficulties may be considered reasonable cause if the taxpayers present credible and competent proof that they were continuously prevented from filing a tax return. (*Appeal of Head and Feliciano, supra.*) When taxpayers allege 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.*) However, if the difficulties simply caused the taxpayers to sacrifice the timeliness of one aspect of their affairs to pursue other aspects, the taxpayers must bear the consequences of that choice. (*Ibid.*; see also *Appeal of Halaburka* (85-SBE-025) 1985 WL 15809 [holding taxpayers were not continuously prevented from fulfilling their tax obligations despite their child's illness].) The taxpayers' selective inability to perform tax obligations, while participating in regular business activities, does not establish reasonable cause. (*Appeal of Head and Feliciano, supra.*)

Here, appellants provide medical documents as to the treatment of the family member from 2017 to February 2018. However, the documents do not establish circumstances that caused appellants to be continuously prevented from timely filing their return during the relevant filing period. The documents also do not explain why appellants did not file their return until March 2021. In addition, appellants earned substantial wages during 2017, and they state that appellant S. Jain was employed until July 2020. As a result, during the period of time in which they assert they were caring for the family member and to which the provided medical documents relate, appellants were able to work and conduct regular business activities. Therefore, the evidence does not show that appellants were continuously prevented from timely filing their 2017 tax return or that such circumstances establish reasonable cause for the late filing of their return.

Appellants assert that they have reasonable cause for the late filing due to the adverse impact from the COVID-19 pandemic as well as litigation they were involved with in 2020. However, appellants' return was due on April 15, 2018, which is more than a year before appellants assert they experienced these difficulties. In addition, appellants do not provide any

evidence substantiating their claims. Accordingly, these assertions cannot form a basis for abatement based on reasonable cause.

Appellants assert that the penalties and interest should be abated because their employer failed to withhold state taxes. An employer's failure to withhold does not relieve the taxpayers of the requirement to file a timely return based on that tax liability. (See R&TC, § 18501; see also *Appeal of Carr*, 2022-OTA-157P [employer's failure to withhold does not relieve the taxpayer of liability for payment of the tax].) Therefore, appellants have not shown the failure by their employer to withhold tax is reasonable cause for the late filing of their return or a basis to abate the late filing penalty.

Appellants also contend that FTB failed to mail correspondence to appellants' current address. However, the Demand and NPA for 2017 were sent to the same address as indicated on appellants' 2017 return.<sup>3</sup> Notices sent by FTB to a taxpayer's last-known address are sufficient, even if not received by the taxpayer. (R&TC, § 18416; *Appeal of Goodwin* (97-SBE-003) 1997 WL 258474.) In addition, FTB had no duty to notify appellants of their filing requirement or of an untimely filing because appellants had the non-delegable duty of ensuring the return was timely filed. (See *Appeal of Mazdyasni*, 2018-OTA-049P.)

Finally, appellants request a first-time penalty abatement given their good filing history. For the year at issue, however, California has not enacted legislation or otherwise allowed for the abatement of the late filing penalty based on a good filing history.<sup>4</sup> Thus, appellants are not eligible for the first-time penalty abatement program. Based on the foregoing, appellants have not established a basis to abate the late filing penalty.

Issue 2: Whether appellants have established a basis to abate the demand penalty.

R&TC section 19133(a) imposes a penalty when taxpayers fail or refuse 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: (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

---

<sup>3</sup> The "last-known address" shall be the address that appears on the taxpayer's last return filed with FTB, unless the taxpayer has 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 taxpayer. (R&TC, § 18416(c).)

<sup>4</sup> R&TC section 19132.5, effective for tax years beginning on or after January 1, 2022, allows individual taxpayers to request a one-time abatement of a timeliness penalty. As the 2017 tax year is at issue here, this newly enacted provision is inapplicable.

(Request) or 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. (Cal. Code Regs., tit. 18, § 19133(b)(1)-(2).)

Here, FTB properly imposed the demand penalty because FTB issued G. Sarkin a Demand for the 2017 tax year and appellants did not timely respond in the prescribed manner. Furthermore, FTB issued G. Sarkin a Request and an NPA for the 2015 tax year and a Demand and an NPA for the 2016 tax year, both of which are within the four-taxable-year period preceding the 2017 tax year. Therefore, the demand penalty was properly imposed.

To establish reasonable cause, a taxpayer must show that the failure to timely respond to a Demand occurred despite the exercise of ordinary business care. (*Appeal of Jones*, 2021-OTA-144P.) Appellants provide the same or similar arguments as to the demand penalty as they did for the late filing penalty. Appellants were required to respond to the Demand by November 25, 2020. As to appellants' contentions that they have reasonable cause due to illness of a family member, appellants provide medical documents as to treatment of the family member from 2017 to February 2018, which is prior to the due date of the Demand on November 25, 2020.

As to appellants' arguments that they have reasonable cause due to the COVID-19 pandemic as well as litigation they were involved with in 2020, appellants do not provide any evidence substantiating their claims. Appellants' argument as to their employer's failure to withhold has no bearing on the demand penalty. Any failure to withhold is not relevant to whether appellants have a filing requirement, as previously discussed, and does not show reasonable cause for the failure to respond to the Demand. With regard to appellants' arguments that the notices were sent to the incorrect address, as previously noted, the Demand and NPA for 2017 were sent to the same address as indicated on appellants' 2017 return, and notices sent by FTB to a taxpayer's last-known address are sufficient, even if not received by the taxpayer. (R&TC, § 18416; *Appeal of Goodwin*, *supra*.)

Finally, as to appellants' request for abatement based on a good filing history, California has not enacted legislation or otherwise allowed for the abatement of the demand penalty based on a good filing history.<sup>5</sup> Accordingly, appellants have not established a basis to abate the demand penalty.

---

<sup>5</sup> California's one-time abatement program applies only to the late filing penalty imposed pursuant to R&TC section 19131 and the late payment penalty imposed pursuant to R&TC section 19132. (R&TC, § 19132.5(c).) Furthermore, R&TC section 19132.5 is effective for tax years beginning on or after January 1, 2022. (R&TC, § 19132.5(f).)

Issue 3: Whether appellants have established a basis to abate interest.

Tax is due on the original due date of the return without regard to any filing extension. (R&TC, § 19001.) If taxpayers do not pay the tax by the original due date of the tax return, or if FTB assesses additional tax, the law provides for the charging of interest on the balance due. (R&TC, § 19101(a).) Imposing interest is mandatory and not a penalty. (*Appeal of Balch*, 2018-OTA-159P.) There is no reasonable cause exception to the imposition of interest. (*Appeal of Gorin*, 2020-OTA-018P.)

To obtain relief from interest, appellants must qualify under R&TC section 19104 (unreasonable error or delay by FTB), R&TC section 19112 (extreme financial hardship), or R&TC section 21012 (reasonable reliance on FTB's written advice). (*Appeal of Moy*, 2019-OTA-057P.) OTA does not have jurisdiction to review FTB's determination regarding extreme financial hardship. (*Ibid.*) Appellants have not alleged, and the evidence in the record does not show, that R&TC sections 19104 or 21012 apply. Therefore, appellants have not established a basis to abate interest.

HOLDINGS

1. Appellants have not established a basis to abate the late filing penalty.
2. Appellants have not established a basis to abate the demand penalty.
3. Appellants have not established a basis to abate interest.

DISPOSITION

FTB's action is sustained.

Signed by:

*Josh Lambert*

CB1F7DA37831416...

Josh Lambert  
Administrative Law Judge

We concur:

Signed by:

*Seth Elsom*

C04CD432F3254FD

Seth Elsom  
Hearing Officer

DocuSigned by:

*Erica Parker*

6651E0AAC34B4F6...

Erica Parker  
Hearing Officer

Date Issued: 3/7/2025