

In the Matter of the Appeal of: ) OTA Case No. 240215351  
**T. LE** )  
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<sup>2</sup> Appellant does not provide specific arguments with respect to the interest amount of \$85.66; therefore, this Opinion will not the address the statutorily imposed interest.

was already filed, or explain why appellant's spouse did not have a filing requirement. Neither appellant nor appellant's spouse responded to the Demand by the November 23, 2022 due date.

4. On April 21, 2023, FTB issued appellant's spouse a Notice of Proposed Assessment (NPA) that estimated income and proposed to assess tax, a late filing penalty, a demand penalty, a filing enforcement fee, and applicable interest. Neither appellant nor appellant's spouse responded by the June 20, 2023 deadline; therefore, the NPA became final and payable.
5. On September 12, 2023, appellant and appellant's spouse untimely filed a 2020 California Resident Income Tax Return, with a married filing jointly status, reporting total tax of \$19,162, withholdings of \$20,827, and an overpayment of \$1,665, which they requested to be refunded.
6. FTB accepted the return and abated the late filing penalty and the filing enforcement fee. FTB also reduced the demand penalty to \$4,790.50 and applicable interest to \$85.66.
7. FTB applied the 2020 tax year overpayment of \$1,665 and a 2019 tax year overpayment of \$3,211.16 to satisfy the 2020 tax year account balance.
8. On October 15, 2023, appellant and appellant's spouse requested a refund of the demand penalty due to reasonable cause.
9. On November 28, 2023, FTB denied the claim for refund and appellant<sup>3</sup> filed this timely appeal.

### DISCUSSION

R&TC section 19133 provides that if a taxpayer fails to make and file a return upon notice and demand by FTB, then FTB may impose a 25 percent demand penalty unless the taxpayer's failure is due to reasonable cause. The demand penalty will only be imposed if: (1) the taxpayer fails to timely respond to a current Demand in the manner prescribed, and (2) FTB has proposed an assessment of tax under 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 that is within the four-taxable-year period immediately preceding the taxable year for which the current Demand is issued.<sup>4</sup> (Cal. Code of Regs., tit. 18, § 19133(b).)

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<sup>3</sup> While appellant and appellant's spouse jointly filed the 2020 tax return and jointly filed the claim for refund with FTB, this appeal is filed only by appellant.

<sup>4</sup> This requirement is met in this appeal because FTB issued appellant's spouse an NPA for the 2019 tax year after neither appellant nor appellant's spouse responded to a request to file a 2019 tax return.

To establish reasonable cause to abate the demand penalty, the taxpayer has the burden of proof to establish that the failure to respond to the Demand in the manner prescribed occurred despite the exercise of ordinary business care and prudence or that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Jones*, 2021-OTA-144P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.)

FTB requested a response by November 23, 2022, in the Demand issued on October 18, 2022. Appellant does not dispute that he failed to respond to the Demand. Rather, appellant argues reasonable cause exists to abate the demand penalty because he did not receive the Demand that was issued on October 18, 2022. Appellant explains he was in another state caring for his mother who succumbed to her illness only four days after the Demand was sent. Appellant states he then had to help with funeral planning and did not return to California until the middle of November 2022. In support of his position, appellant provides airline itineraries listing himself as the passenger for travel to another state on October 14, 2022, November 3, 2022, and again on February 2, 2023. Appellant also provides credit card receipts for transactions that originated in the other state dated October 15, 2022, and October 24, 2022. Appellant also contends he was a shareholder of an S corporation and had to wait a long time for his Schedule K-1 to be issued.

Illness or other personal difficulties may be considered reasonable cause where taxpayers present credible and competent proof that they were continuously prevented from performing their tax obligations. (See *Appeal of Belcher*, 2021-OTA-284P [discussing reasonable cause as applied to the late filing penalty].) 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.*) If the difficulties simply caused taxpayers to sacrifice the timeliness of one aspect of their affairs to pursue other aspects, taxpayers must bear the consequences of that choice. (*Ibid.*)

On appeal, appellant provides evidence that he was dealing with the illness of an immediate family member and was in another state at the time the Demand was issued. However, even assuming, without concluding, that appellant was continuously prevented from responding to the Demand, the record does not contain evidence, and appellant does not assert, that appellant's spouse was also prevented from responding to the Demand. Appellant

fails to explain how he and his spouse were continuously prevented from responding to the Demand.<sup>5</sup> (See *Appeal of Belcher, supra.*)

Appellant's statement that he had to wait a long time to receive his Schedule K-1 does not explain why he, or his spouse, was unable to respond to the Demand issued on October 18, 2022. Appellant provides no evidence or explanation of what steps he, or his spouse, took to respond to the Demand or that he exercised ordinary business care and prudence. (See *Appeal of Shanahan, supra.*) Appellant's unsupported contentions are not sufficient to satisfy the burden of proof. (See *GEF Operating, Inc., supra.*) Appellant has failed to show reasonable cause to abate the demand penalty.

### HOLDING

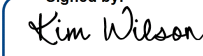
Appellant has not established reasonable cause to abate the demand penalty for the 2020 tax year.


### DISPOSITION

FTB's action denying appellant's claim for refund is sustained.

DocuSigned by:  
  
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Erica Parker  
Hearing Officer

We concur:

Signed by:  
  
4E8E740EDB984CD...  
Kim Wilson  
Hearing Officer

DocuSigned by:  
  
7B17E958B7C14AC...  
Amanda Vassigh  
Administrative Law Judge

Date Issued: 3/20/2025

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<sup>5</sup> Appellant did not file the joint 2020 California return until September 12, 2023, over nine months after the due date to respond to the Demand.