

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
L. GANDDINI) OTA Case No. 230613611
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OPINION

Representing the Parties:

For Appellant: L. Ganddini

For Respondent: Blake Cunningham, Specialist

For Office of Tax Appeals: William J. Stafford, Attorney

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, L. Ganddini (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of a late filing penalty of \$1,843.50 and a demand penalty of \$1,004.25 for the 2020 taxable year.¹

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

ISSUES

1. Whether the late filing penalty should be abated.
2. Whether the demand penalty should be abated.

FACTUAL FINDINGS

1. Appellant received sufficient income in 2020 to require the filing of a 2020 California personal income tax return (Form 540). When appellant did not file a timely 2020 Form 540, respondent issued a demand notice dated May 24, 2022 (Demand),

¹ On August 18, 2022, respondent issued a “Notice of Tax Return Change-Revised Balance,” which sets forth a total tax liability of \$7,374.00, a late filing penalty of \$1,843.50, a demand penalty of \$1,004.25, and interest of \$455.81. Appellant paid all amounts due for the 2020 tax year. Appellant seeks a refund of only the late filing penalty of \$1,843.50 and the demand penalty of \$1,004.25.

- demanding that appellant file a 2020 California return or explain why no return was required.
2. When appellant neither filed a 2020 Form 540 nor otherwise responded to the Demand, respondent issued a Notice of Proposed Assessment (NPA) on July 22, 2022, based on the income information it received from various reporting sources. The NPA set forth a total tax of \$4,017, a late filing penalty of \$1,004.25, a demand penalty of \$1,004.25, and a filing enforcement fee of \$100, plus applicable interest.
 3. On August 11, 2022, appellant filed his 2020 Form 540, reporting a tax due of \$7,374, which respondent accepted.
 4. Subsequently, respondent issued a "Notice of Tax Return Change-Revised Balance" for the 2020 tax year, which set forth a total tax liability of \$7,374, a late filing penalty of \$1,843.50, a demand penalty of \$1,004.25, and interest of \$455.81.
 5. Appellant paid all amounts due for the 2020 tax year, and then filed a claim for refund for the late filing penalty of \$1,843.50 and the demand penalty of \$1,004.25. Respondent denied the claim, stating that appellant had not established reasonable cause for abatement of the penalties.

DISCUSSION

Issue 1: Whether the late filing penalty should be abated.

California imposes a late filing penalty for failing to file a return by its due date, unless the failure to file was due to reasonable cause and not due to willful neglect. (R&TC, § 19131.) To establish reasonable cause, a taxpayer must show that the failure to file a timely return occurred despite the exercise of ordinary business care and prudence, or that cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid.*)

Illness or other personal difficulties may constitute reasonable cause for abatement of the late filing penalty if the illness or personal difficulties continuously prevented the taxpayer from filing a timely return. (*Appeal of Belcher*, 2021-OTA-284P; see *Wilkinson v. Commissioner*, T.C. Memo. 1997-410 [mental illness].) However, if the illness or personal difficulties simply caused the taxpayer to sacrifice the timeliness of one aspect of the taxpayer's affairs to pursue other aspects, the taxpayer must bear the consequences of that choice. (See *Appeal of Belcher, supra.*)

Appellant asserts, in a general manner, that the penalties should be abated because he had been suffering from depression. While appellant's argument is compelling, he has not provided evidence (such as a doctor's note, medical records, etc.) demonstrating that (1) appellant's condition prevented him from timely filing his 2020 California return, and (2) appellant did not sacrifice the timeliness of one aspect of his affairs (such as the filing of his 2020 Form 540) to pursue other matters. (See *Appeal of Belcher, supra.*) As indicated above, unsupported assertions are not sufficient to satisfy appellant's burden of proof. (*Appeal of GEF Operating, Inc., supra.*)

Accordingly, there is no basis for abating the late filing penalty.

Issue 2: Whether the demand penalty should be abated.

California imposes a demand penalty for failing to file a return or provide information upon respondent's demand to do so, unless the failure to do so was due to reasonable cause and not willful neglect. (R&TC, § 19133.) The burden is on the taxpayer to prove that reasonable cause existed. (*Appeal of GEF Operating, Inc., supra; Appeal of James (83-SBE-009) 1983 WL 15396.*) The framework for determining the existence of reasonable cause under the demand penalty is virtually identical to that under the late filing penalty outlined above. (See *Appeal of Belcher, supra; Appeal of GEF Operating, Inc., supra.*)

Respondent will only impose a demand penalty if the taxpayer fails to respond to a current demand for tax return and respondent issued an NPA 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 for tax return at any time during the four-taxable-years preceding the year for which the current demand for tax return is being issued.² (Cal. Code Regs., tit. 18, § 19133(b).)

As noted above, respondent issued the Demand to appellant on May 24, 2022, and the Demand gave appellant until June 29, 2022, to respond, which he failed to do. Thus, to establish reasonable cause for refund of the demand penalty, appellant must show why he did not file a return or otherwise respond to the Demand between the dates of May 24, 2022, and June 29, 2022.

Appellant's assertion regarding the demand penalty is the same as his assertion regarding the late filing penalty: appellant attributes his failure to respond to his depression. Again, while his argument is compelling, appellant has not provided evidence (such as a doctor's note, medical records, etc.) to substantiate it. As indicated above, unsupported

² In this regard, respondent previously issued an NPA to appellant for the 2019 tax year (a tax year not at issue) on October 8, 2021, following appellant's failure to timely respond to a demand notice for the 2019 taxable year.

assertions are not sufficient to satisfy appellant’s burden of proof. (*Appeal of GEF Operating, Inc., supra.*)

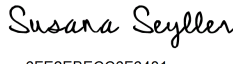
Accordingly, there is no basis for abating the demand penalty.

HOLDINGS

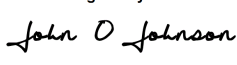
1. The late filing penalty should not be abated.
2. The demand penalty should not be abated.

DISPOSITION

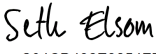
Respondent’s denial of appellant’s claim for refund is sustained.

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 Tommy Leung
 Administrative Law Judge

We concur:
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 John O. Johnson
 Administrative Law Judge

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 Seth Elsom
 Hearing Officer

Date Issued: 10/2/2025