

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

In the Matter of the Appeal of: ) OTA Case No. 230814199  
J. SUN AND )  
B. HUANG )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: B. Huang  
Onyi Hui, Tax Appeals Assistance Program  
(TAAP)<sup>1</sup>

For Respondent: Vivian Ho, Attorney  
Maria Brosterhous, Attorney Supervisor

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Sun and B. Huang (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants' claim for refund of: (1) a notice and demand (demand) penalty of \$368.25 and a collection cost recovery fee of \$316, plus applicable interest, for the 2018 tax year; and (2) a demand penalty of \$1,054.25, plus applicable interest, for the 2019 tax year.

Office of Tax Appeals (OTA) Panel Members Josh Lambert, Kim Wilson, and Sara A. Hosey held a virtual oral hearing for this matter on November 20, 2025. At the conclusion of the hearing, the record was closed, and this matter was submitted for an opinion pursuant to California Code of Regulations, title 18, (Regulation) section 30209(b).

**ISSUES**

1. Whether appellants have established a basis to abate the demand penalties for 2018 and 2019.
2. Whether appellants have established a basis to abate the collection cost recovery fee for 2018.

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<sup>1</sup> Aaron Weiner of TAAP filed appellants' supplemental opening brief.

FACTUAL FINDINGS2017 Tax Year

1. For the 2017 tax year, FTB issued a Notice of Proposed Assessment (NPA) to B. Huang (appellant-wife) following her failure to timely respond to a Request for Tax Return (Request) in the manner prescribed.

2018 Tax Year

2. Appellants did not timely file a tax return for the 2018 tax year. FTB received information that appellants may have received income in 2018 sufficient to require them to file a California tax return.
3. FTB Issued to appellant-wife a Demand for Tax Return (Demand) on May 18, 2021, requesting that by June 23, 2021, she respond by filing a tax return, provide a copy of the tax return if already filed, or provide information to determine whether she was required to file a tax return.
4. After appellant-wife did not respond to the Demand in the manner prescribed, FTB issued to her an NPA on July 23, 2021, proposing a tax assessment, a late filing penalty, a demand penalty of \$368.25, a filing enforcement fee, and interest.
5. On December 14, 2020, FTB sent J. Sun (appellant-husband) a Request, requesting that by January 13, 2021, he respond by filing a tax return, provide a copy of the tax return if already filed, or provide information to determine whether he was required to file a tax return.<sup>2</sup>
6. After appellant-husband did not respond to the Request in the manner prescribed, FTB issued to him an NPA on April 23, 2021, proposing a tax assessment, a late filing penalty, and interest.
7. On July 19, 2021, FTB issued appellants a State Income Tax Balance Due Notice stating that they must pay the balance due by August 3, 2021, or FTB may begin collection action. FTB issued appellants a Final Notice Before Levy and Lien, stating that FTB intended to take collection action and may impose a collection fee. Subsequently, FTB imposed a collection cost recovery fee of \$316.
8. On October 15, 2022, appellants filed a California tax return using a filing status of married filing jointly, reporting appellant-husband's wages, no tax due, and claiming a

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<sup>2</sup> FTB granted deferrals to appellant-husband, allowing him until February 27, 2021, and then March 29, 2021, to file a tax return.

refund. FTB accepted appellants' return as filed and the late filing penalties were withdrawn.

9. Based on appellants' tax return, FTB issued a Notice of Tax Return Change – Refund dated February 21, 2023, which notified appellants of a revised refund amount that was net of the demand penalty of \$368.25.

#### 2019 Tax Year

10. Appellants did not timely file a California tax return for the 2019 tax year. FTB received information that appellants may have received income in 2019 sufficient to require them to file a California tax return.
11. On November 9, 2021, FTB issued appellant-husband a Demand, requesting that by December 15, 2021, he respond by filing a tax return, provide a copy of the tax return if already filed, or provide information to determine whether he was required to file a tax return.<sup>3</sup>
12. After appellant-husband did not respond to the Demand in the manner prescribed, FTB issued him an NPA on February 18, 2022, proposing a tax assessment, a demand penalty of \$2,924.25, a late filing penalty, a filing enforcement fee, and interest.
13. On March 21, 2022, FTB issued to appellant-wife a Demand requesting that by April 20, 2022, she respond by filing a tax return, provide a copy of the tax return if already filed, or provide information to determine whether she was required to file a tax return.<sup>4</sup>
14. FTB issued appellant-wife an NPA on August 12, 2022, proposing a tax assessment, a late filing penalty, a demand penalty of \$261.75, a filing enforcement fee, and interest.
15. On April 13, 2022, appellants filed a California tax return using a filing status of married filing jointly, reporting appellant-husband's wages, no tax due, and claiming a refund. FTB accepted appellants' return as filed and the late filing penalty was withdrawn.
16. Based on appellants' tax return, FTB issued a Notice of Tax Return Change – Refund dated December 5, 2022, which resulted in a refund to appellants that was net of a revised demand penalty of \$1,054.25.

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<sup>3</sup> FTB granted appellant-husband a requested deferral, allowing him until January 28, 2022, to file his tax return.

<sup>4</sup> FTB granted appellant-wife a requested deferral, allowing her until June 20, 2022, to file her tax return.

Claim for Refund

17. Appellants filed a claim for refund for the 2018 demand penalty and collection cost recovery fee and the 2019 demand penalty, which FTB denied.
18. This timely appeal followed.

DISCUSSIONIssue 1: Whether appellants have established a basis to abate the demand penalties.

R&TC section 19133 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 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).)

For the 2018 tax year, FTB properly imposed the demand penalty because FTB issued an NPA after appellant-wife failed to properly respond to the 2018 Demand by the deadline. Furthermore, FTB issued an NPA following appellant-wife's failure to timely respond in the prescribed manner to a prior Request for the 2017 tax year, which is within the four-taxable-year period preceding 2018. (See Cal. Code Regs., tit. 18, § 19133(b)(2).)

For the 2019 tax year, FTB properly imposed the demand penalty because FTB issued an NPA after appellant-husband failed to properly respond to the 2019 Demand by the deadline. Furthermore, FTB issued an NPA following appellant-husband's failure to timely respond in the prescribed manner to a prior Request for the 2018 tax year, which is within the four-taxable-year period preceding 2019. (See Cal. Code Regs., tit. 18, § 19133(b)(2).)

Appellants filed joint tax returns; therefore, appellants are jointly and severally liable for the tax due as well as any penalties associated with the tax. (IRC, § 6013(d)(3); R&TC, § 19006.)

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.) The taxpayer's reason for failing to respond to the Demand must be such that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid.*)

Illness or other personal difficulties may be considered reasonable cause, if taxpayers present credible and competent proof that they were continuously prevented from filing a tax return. (*Appeal of Belcher*, 2021-OTA-284P.)<sup>5</sup> When taxpayers allege reasonable cause based on an incapacity due to illness, 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.*) The selective inability to perform tax obligations while participating in regular business activities does not establish reasonable cause. (*Appeal of Head and Feliciano*, 2020-OTA-127P.)

Appellants argue there is reasonable cause for failing to timely respond to the Demands because of personal difficulties including medical issues of appellant-wife's mother and appellant-husband's job as an essential worker during the Covid-19 pandemic. Appellants provide documentation and testimony from appellant-wife in support of their assertions.

Appellants have not established reasonable cause because appellant-husband was employed and earned wages during the period in which they failed to respond to the Demands. Appellant-husband's selective inability to perform tax obligations while participating in regular business activities and his sacrifice of the timeliness of responding to the Demands to pursue other aspects of his affairs does not establish reasonable cause. (See *Appeal of Belcher*, *supra*; *Appeal of Head and Feliciano*, *supra*.) As a result, appellants have not established reasonable cause for the failure to respond to the Demands.

Appellants also assert that they called FTB on numerous occasions and were told that they received further deferrals and that no penalties would be imposed. Appellants essentially argue that FTB should be estopped from imposing the demand penalties because of FTB's erroneous advice, which falls under the doctrine of equitable estoppel. However, alleged oral advice by one of FTB's employees does not generally give rise to a claim of equitable estoppel. (*Appeal of Western Colorprint* (78-SBE-071) 1978 WL 3544.) Accordingly, the demand penalties were properly imposed, and appellants have not established a basis to abate the demand penalties.

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<sup>5</sup> Since the issue of whether a taxpayer has demonstrated reasonable cause for failure to timely file a tax return or timely pay tax ask the same questions and weighs the same evidence as the inquiry of whether reasonable cause exists for failure to timely respond to a Demand, decisions analyzing whether reasonable cause existed for failure to timely file a tax return or failure to timely pay tax are persuasive authority for determining whether reasonable cause existed for the failure to timely respond to a Demand. (See *Appeal of Triple Crown Baseball*, 2019-OTA-025P.)

Issue 2: Whether appellants have established a basis to abate the collection cost recovery fee for 2018.

R&TC section 19254(a)(1) requires FTB to impose a collection cost recovery fee when FTB notifies a taxpayer that the continued failure to pay an amount due may result in the imposition of the fee, and the taxpayer fails to timely pay the amount due in response to the notice. There is no reasonable cause defense to the imposition of the collection cost recovery fee; thus, OTA’s inquiry is limited to determining whether FTB complied with the statutory notice requirements for imposing the fee. (*Appeal of Auburn Old Town Gallery, LLC*, 2019-OTA-319P.)


FTB issued appellants a Final Notice Before Levy and Lien, stating that FTB intended to take collection action and may impose a collection fee. Because appellants failed to pay the liability after receiving that notice, the fee was properly imposed under R&TC section 19254(a)(1). OTA has no authority to abate or modify this fee. Therefore, appellants have not established grounds to abate the fee, and FTB’s imposition of the fee is sustained.

HOLDINGS

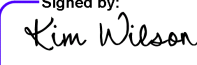
1. Appellants have not established a basis to abate the demand penalties for 2018 and 2019.
2. Appellants have not established a basis to abate the collection cost recovery fee for 2018.

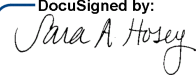
DISPOSITION

FTB’s action is sustained.

Signed by:  
  
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 Josh Lambert  
 Administrative Law Judge

We concur:

Signed by:  
  
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 Kim Wilson  
 Hearing Officer

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 Sara A. Hosey  
 Administrative Law Judge

Date Issued: 1/26/2026