OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **Y. ZHANG AND** **J. FAN**	OTA Case No. 250419143

OPINION

Representing the Parties:

For Appellants: Y. Zhang and J. Fan

For Respondent: Amelia Breen, Attorney

For Office of Tax Appeals: Michelle Huh, Attorney

E. PARKER, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Y. Zhang and J. Fan (collectively, appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants' claim for refund of a demand penalty of $9,998.50 for the 2021 tax year.

Appellants waived the right to an oral hearing; therefore, the matter was submitted to the Office of Tax Appeals on the written record pursuant to California Code of Regulations, title 18, section 30209(a).

ISSUE[1]

Whether appellants have established reasonable cause to abate the demand penalty.

FACTUAL FINDINGS

1. Appellants did not timely file a 2021 California tax return. FTB received information indicating that appellant Y. Zhang had sufficient income during the 2021 tax year that may require the filing of a tax return for that year. On May 7, 2024, FTB issued a

[1] Appellants only appeal FTB's Notice of Action related to the denial of appellants' claim for refund of the demand penalty. While the record indicates that appellants also filed a request for abatement of interest with FTB, appellants provide no arguments related to the abatement of interest on appeal. Therefore, this Opinion will not discuss interest abatement.

Demand for Tax Return (Demand) to appellant Y. Zhang and requested that she respond to the Demand by June 12, 2024.

2. When appellant Y. Zhang did not respond to the Demand, FTB issued her a Notice of Proposed Assessment (NPA) for the 2021 tax year. The NPA proposed to assess a tax of $5,838, a late filing penalty of $1,495.50, a demand penalty of $1,459.50, a filing enforcement fee of $121, and applicable interest.
3. On November 5, 2024, appellants filed a 2021 California Resident Income Tax Return with a filing status of married filing jointly, reporting total tax of $39,994, California income tax withholdings of $40,462, and an overpayment of $468. Appellants requested a refund of their overpayment.
4. FTB accepted the return and issued a Notice of Tax Return Change – Revised Balance to increase the demand penalty to $9,998.50, plus applicable interest. On December 9, 2024, a portion of appellants' overpayment from the 2023 tax year was transferred and credited to their 2021 tax account, satisfying the demand penalty and interest balance due.
5. On December 11, 2024, appellants filed a claim for refund of the demand penalty based on reasonable cause.
6. On December 30, 2024, FTB denied appellants' claim for refund of the demand penalty.
7. This timely appeal followed.
8. As relevant here, FTB previously issued appellant Y. Zhang an NPA for the 2019 tax year following her failure to respond to a 2019 Request for Tax Return (Request).

DISCUSSION

If any taxpayer fails to furnish information requested by FTB or fails to make and file a return upon notice and demand by FTB, then FTB may add a demand penalty of 25 percent of the amount of tax for which the information or return was required, unless the failure is due to reasonable cause and not willful neglect. (R&TC, § 19133.) For individual taxpayers, the demand penalty will only be imposed by FTB 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 fails to timely respond to a Request 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. (Cal. Code Regs., tit. 18, § 19133(b).) The demand penalty is computed at 25 percent of the amount of the taxpayer's total tax liability, which is determined without regard to tax withholding and other payments. (R&TC, § 19133; *Appeal of Jones*, 2021-OTA-144P.)

Here, FTB imposed the demand penalty after appellant Y. Zhang failed to respond to the May 7, 2024 Demand by the stated response date of June 12, 2024. FTB calculated the demand penalty based on 25 percent of the tax reported by appellants on their 2021 return ($39,994), without regard to tax withholding, which results in a penalty amount of $9,998.50 (25 percent x $39,994). Thus, FTB properly imposed and calculated the demand penalty for the 2021 tax year.[2]

To establish reasonable cause to abate the demand penalty, a 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 Shanahan*, 2024-OTA-039P.)

Illness or personal difficulties may be considered reasonable cause if the taxpayers present credible and competent proof that they were continuously prevented from responding to the Demand. (*Appeal of Head and Feliciano*, 2020-OTA-127P; see also *Appeal of Halaburka* (86-SBE-025) 1985 WL 15809.) 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. (*Appeal of Head and Feliciano*, *supra*.) 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 taxpayers' selective inability to perform tax obligations, while participating in regular business activities, does not establish reasonable cause. (*Ibid*.)

As relevant here, appellants assert that they failed to respond to the Demand by June 12, 2024, because appellant Y. Zhang was recovering from ankle surgery and appellant J. Fan was caring for her during her "lengthy post-surgery recovery." Appellants provide copies of medical records related to appellant Y. Zhang's December 13, 2023 ankle surgery, and

[2] Although FTB imposed the demand penalty on appellant Y. Zhang, the general rule is that spouses filing a joint return are jointly and severally liable for the tax on the aggregate income of both spouses. (See R&TC, § 19006(b).) Thus, since appellant Y. Zhang's failure to respond to both a current Demand and prior year's Request resulted in the imposition of a demand penalty for the 2021 tax year pursuant to section R&TC 19133, upon appellants' filing a joint return they became jointly and severally liable for that penalty. In specified circumstances, a spouse may qualify as an "innocent spouse" and obtain relief from joint and several liability for tax and penalty amounts arising from a joint return (see R&TC, § 18533); however, no such claim has been made in this appeal.

multiple follow-up visits. Appellants also provide a copy of an August 5, 2025 doctor visit summary for appellant J. Fan.

Without discounting the difficulties and hardships appellant Y. Zhang experienced during her recovery from ankle surgery, the record does not show she was continuously prevented by incapacity from responding to the Demand, as the law requires. (See *Appeal of Head and Feliciano*, *supra*.) For example, the record shows that as of March 12, 2024, appellant Y. Zhang's post-operation doctor visit reported she was recovering from ankle surgery and "appears well" and "in no apparent distress." The next medical record is dated July 24, 2024, over four months later, and reports appellant Y. Zhang "has been back to yoga, gym 3x week and hiking. Having some pain after long days in lateral foot." Appellants provide no documentation in support of their assertions that as of June 12, 2024, appellant Y. Zhang was incapacitated and prevented from responding to the Demand. Thus, appellants have not established reasonable cause to abate the demand penalty.

HOLDING

Appellants have not established reasonable cause to abate the demand penalty.

DISPOSITION

FTB's action in denying appellants' claim for refund is sustained.

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Erica Parker
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Erica Parker
Hearing Officer

We concur:

Signed by:
Seth Elsom
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Seth Elsom
Hearing Officer

Signed by:
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Hans Famularo
Administrative Law Judge

Date Issued: 4/6/2026