

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:	)	OTA Case No. 250622397
E. TANZILLO AND	)	
J. TANZILLO	)	
	)	
	)	
	)	

OPINION

Representing the Parties:

For Appellants:	Ellery Armstrong, TAAP ¹ Student Representative
For Respondent:	Jeffrey Gates, Attorney Topher Tuttle, Attorney

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, E. Tanzillo and J. Tanzillo (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants' claim for refund of \$4,547 for the 2021 taxable year.

Office of Tax Appeals (OTA) Administrative Law Judge Teresa A. Stanley held a virtual oral hearing for this matter on April 16, 2026. At the conclusion of the oral hearing, the record was closed, and this matter was submitted on the oral hearing record pursuant to California Code of Regulations, title 18, section 30209(b).

ISSUE

Have appellants established reasonable cause to abate the penalty for failure to respond to a demand for tax return (Demand Penalty)?

FACTUAL FINDINGS

1. Appellants failed to file a timely California tax return for 2021.
2. FTB received information that E. Tanzillo earned wages reported to the Employment Development Department (EDD) exceeding the threshold for filing a California tax return. On April 30, 2024, FTB issued to E. Tanzillo a Demand for Tax Return (Demand)

¹ Taxpayer Appeals Assistance Program.

- requesting that E. Tanzillo file a tax return or provide information showing he was not required to do so.
3. FTB previously issued to E. Tanzillo a Request for Tax Return (Request) for taxable year 2020, to which E. Tanzillo did not respond. FTB thereafter issued a Notice of Proposed Assessment (NPA), which proposed to assess taxes, penalties, and interest for that prior taxable year.
 4. Because appellant E. Tanzillo did not respond to the Demand for 2021, FTB issued an NPA to E. Tanzillo proposing taxes, a Demand Penalty of \$4,547, plus applicable interest, and a filing enforcement fee.
 5. Appellant E. Tanzillo protested the NPA and requested an additional 30 days to file a 2021 tax return.
 6. Appellants filed a joint California Resident Income Tax Return for 2021 on November 1, 2024. The return did not report any self-assessed penalties.
 7. FTB issued a Notice of Tax Return Change – Revised Balance that resulted in a balance due of \$4,644.43.²
 8. Appellants filed a claim for refund for abatement of the Demand Penalty based on reasonable cause.
 9. FTB denied appellants' claim for refund, and appellants filed this timely appeal.³
 10. On appeal, appellants provide the following evidence:
 - a. A letter dated October 10, 2025, issued by a nurse practitioner who indicates that E. Tanzillo has been undergoing treatment since November 1, 2024. The letter lists the diagnosis of four mental health disorders, one that is deemed "severe," that are included in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5).
 - b. A written declaration signed by J. Tanzillo under penalty of perjury that details aspects of E. Tanzillo's declining mental health, including difficulties handling simple tasks such as opening the mail.
 - c. Documentation supporting E. Tanzillo's continuing treatments addressing the DSM-5 diagnoses.
 11. At the oral hearing, E. Tanzillo testified that:
 - a. He had been dealing with undiagnosed DSM-5 mental disorders since 2020.

² This amount consists of the Demand Penalty of \$4,547 plus interest.

³ OTA's record does not contain any record of appellants' payment but FTB denied their claim for refund so presumably appellants paid the balance.

- b. The comorbidity of the illnesses caused him to be unable to do things that seem “simple and easy” for others.
- c. He was missing deadlines at work, not answering emails, and had mail piling up on his desk.
- d. He sometimes had to work as many as 18 hours a day in order to complete his work.
- e. At the urging of his wife, and after a mental breakdown while speaking on the phone with a tax agency employee, E. Tanzillo finally sought professional help and is now under the care of a psychiatrist.

DISCUSSION

If any taxpayer fails or refuses to file a tax return or provide information upon notice and demand by FTB, then, unless the failure is due to reasonable cause and not willful neglect, FTB may add a penalty of 25 percent of any deficiency tax assessed by FTB concerning the assessment of which the return was required. (R&TC, § 19133.) 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 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).)

Here, appellants failed to file a tax return or otherwise respond to FTB’s Demand, and FTB thereafter issued an NPA. Appellants also failed to respond to the Request for the prior year (2020), which also resulted in FTB issuing an NPA. Therefore, FTB properly imposed the Demand Penalty. The remaining issue is whether appellants’ failure was due to reasonable cause and not due to willful neglect.

When FTB imposes a penalty, the law presumes that the penalty was imposed correctly, and the burden of proof is on the taxpayer to establish otherwise. (*Appeal of Xie*, 2018-OTA-076P.) To overcome the presumption of correctness attached to the penalty, a taxpayer must provide credible and competent evidence supporting a claim of reasonable cause; otherwise, the penalty cannot be abated. (*Ibid.*) 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.*)

Appellants assert that E. Tanzillo handled all financial matters for the family and processed the mail. Appellants contend that during April 2024, when FTB issued the Demand, E. Tanzillo's mental health had deteriorated to the point where he was unable to handle simple tasks such as opening and acting on mail. Appellants claim that based on E. Tanzillo's undiagnosed and untreated mental health issues, appellants' failure to respond to the Demand was reasonable and not done willfully.

OTA first notes that the Demand was issued only to E. Tanzillo based on records of earnings obtained by FTB. Therefore, appellants must only establish that E. Tanzillo had reasonable cause for the failure to respond to FTB's Demand. E. Tanzillo credibly testified that he had ignored signs of his mental illnesses for years prior to FTB issuing the Demand. Appellants both point out that E. Tanzillo's mental condition had deteriorated by April 2021 when the Demand was issued. J. Tanzillo declares that when she tried to help E. Tanzillo organize his desk, particularly in the second quarter of 2021, she would find stacks of opened and unopened mail mixed with his work notes and that the mailbox would often be overflowing before E. Tanzillo collected the mail. E. Tanzillo acknowledges that he was in denial about his mental health condition and was encouraged on several occasions to seek expert help, but that he was scared to do so because of the stigma. After E. Tanzillo finally sought professional help and was able to receive treatment, E. Tanzillo was able to handle neglected chores, such as responding to FTB's notice and filing the 2021 tax return, which he did shortly thereafter. All of this evidence supports appellants' contention that there is reasonable cause for the failure to respond to the Demand.

FTB asserts that appellant E. Tanzillo was able to care for his father-in-law and to function at work and that appellants engaged in capital gain/loss transactions and participated in rental activity. FTB contends, therefore, that appellants' difficulties simply caused the taxpayers to sacrifice the timeliness of one aspect of their affairs to pursue other aspects and must bear the consequences of that choice. (*See Appeal of Head and Feliciano*, 2020-OTA-127P.)

However, the evidence strongly supports appellants' contention that the timeliness of other aspects of E. Tanzillo's life suffered as well, not just his tax obligations. E. Tanzillo was able to handle "routine" tasks but often missed work deadlines or had to work as many as 18 hours a day in order to complete his assignments. There is no evidence showing if and how capital gain/loss transactions and rental activities were performed on behalf of appellants nor of any timeliness requirements related to those activities. With respect to caring for E. Tanzillo's seriously ill and disabled father-in-law, the activities described by appellants require exigency, not timeliness; i.e., it was E. Tanzillo's role to help with physical needs on a daily basis. OTA

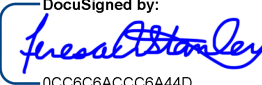
finds that appellants' circumstances during the relevant time period constitute reasonable cause to abate the Demand Penalty.

HOLDING

Appellants have established reasonable cause to abate the Demand Penalty.

DISPOSITION

OTA reverses FTB's action denying appellants' claim for refund.

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Teresa A. Stanley
Administrative Law Judge

Date Issued: 7/14/2026