

In the Matter of the Appeal of:) OTA Case No. 240917334
R. ALDEN)
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1. Appellant failed to timely file a Form 540 California Resident Income Tax Return (Return) for the 2020 tax year. Respondent received notices from various third parties that appellant may have received income for the 2020 tax year and, accordingly, issued appellant a Demand for Tax Return (Demand) dated June 6, 2023. In the Demand, respondent demanded that appellant either file a Return, send a copy of a Return that he had already filed, or provide certain other information by July 12, 2023, or respondent would assess taxes, a Demand Penalty, a filing enforcement cost recovery fee, and interest.

2. Appellant did not respond to the Demand. Accordingly, respondent issued appellant a Notice of Proposed Assessment (NPA) that estimated appellant's income and proposed an assessment of taxes, a late-filing penalty, a Demand Penalty of \$6,752.75, a filing enforcement cost recovery fee, and interest.
3. Appellant and his spouse or registered domestic partner (partner) filed a joint Return for the 2020 tax year on January 26, 2024.¹
4. Respondent issued appellant and partner a Notice of Tax Return Change informing them that the taxes withheld on appellant's income fully paid the assessed Demand Penalty of \$6,752.75.
5. Appellant and his partner filed a Form FTB 2917 Reasonable Cause – Individual and Fiduciary Claim for Refund (Claim) for abatement of the Demand Penalty.²
6. This timely appeal followed.
7. Respondent previously issued a Request for Tax Return (Request) for appellant's Return for the 2017 tax year. After appellant failed to respond to the Request, respondent issued an NPA that estimated appellant's income and proposed an assessment of income taxes for the 2017 tax year, dated December 2, 2019.
8. During this appeal, appellant submits medical records from 2019 through December 2023. Appellant also submits evidence that he entered an assisted-care facility in March 2023.

DISCUSSION

If a taxpayer fails or refuses to file a tax return or provide information upon notice and demand by respondent, then, unless the failure is due to reasonable cause and not willful neglect, respondent may add a Demand Penalty of 25 percent of any deficiency tax assessed by respondent concerning the assessment of which the return was required. (R&TC, § 19133.) The Demand Penalty is calculated on the “amount of tax” or any deficiency tax that respondent assesses. (*Appeal of Jones*, 2021-OTA-144P.) The statute does not modify the phrase “amount of tax” or provide for any reductions based on payments. (*Appeal of Jones, supra.*)

¹ The source of income reported on the joint Return was wage income earned by appellant. The Demand Penalty at issue was computed based upon 25 percent of the income taxes reported of \$27,011, which was based solely on appellant's wage income. Appellant's partner did not join the appeal with OTA. Therefore, OTA shall address the Demand Penalty only as it relates to appellant.

² Appellant's Claim filed with respondent appears to also indicate a refund claim of \$5,568.70 for appellant's overpayment of tax for 2020 tax year, which respondent carried back to appellant's 2018 tax year liability. Appellant included only the Demand Penalty in his appeal to OTA; therefore, only the claim with respect to the Demand Penalty shall be considered.

Respondent will impose a Demand Penalty only if: (1) the taxpayer fails to timely respond to a current Demand in the manner prescribed; and (2) respondent has proposed an assessment of tax under R&TC section 19087(a), after the taxpayer failed to timely respond to a Demand in the manner prescribed, at any time during the four-tax-year period immediately preceding the tax year for which the current Demand is issued. (Cal. Code Regs., tit. 18, § 19133(b); see *Appeal of Jones, supra.*)

Respondent stated in the Demand that it received information indicating that appellant earned income during the 2020 tax year and may have had a Return filing obligation. Appellant failed to respond to respondent's Demand, which was dated June 6, 2023. Previously, respondent issued appellant a Request with respect to appellant's 2017 tax year, and issued appellant an NPA on December 2, 2019, which is within the four-year period preceding the 2020 tax year. Therefore, respondent properly imposed the Demand Penalty under R&TC section 19133 and California Code of Regulations, title 18, section 19133(b).

Appellant argues, however, that he qualifies for reasonable cause for failing to respond to respondent's Demand because he was experiencing severe medical issues. In support, appellant provides medical documentation for the time period starting in 2019 through the end of 2023 (which includes the period between the June 6, 2023 Demand and the due date for appellant's response on July 12, 2023.)

A properly imposed Demand Penalty may be abated if a taxpayer can establish reasonable cause. (R&TC, § 19133.) 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 Jones, supra.*)

Illness or other personal difficulties may be considered reasonable cause with respect to the late-filing penalty under R&TC section 19131, if a taxpayer presents credible and competent proof that they were continuously prevented from filing a tax return. (See *Appeal of Head and Feliciano*, 2020-OTA-127P [evaluating whether there was reasonable cause to abate the late-filing penalty].) When a taxpayer alleges reasonable cause based on an incapacity due to illness, the duration of the incapacity must approximate that the period in which the taxpayer failed to respond to the Demand. (*Ibid*; see *Appeal of Halaburka* (85-SBE-025) 1985 WL 15809.) However, if the difficulties simply caused the taxpayer to sacrifice the timeliness of one aspect of their affairs to pursue other aspects, the taxpayer must bear the consequences of that choice. (*Appeal of Head and Feliciano, supra.*) The taxpayer's selective inability to perform tax

obligations, while participating in regular business activities, does not establish reasonable cause. (*Ibid.*)

With this standard in mind, OTA now turns to consider whether appellant has provided sufficient support for his argument that his medical issues provided reasonable cause for failing to respond to the Demand, which was dated June 6, 2023, by July 12, 2023, when appellant's response to the Demand was due.

On or around March 29, 2023, appellant moved into a residential, assisted-care facility that provided medical care, food, and housekeeping services. His treating orthopedic surgeon noted in an evaluation dated April 20, 2023, that appellant "cannot manage his daily life without help," as he was wheelchair-bound and could not walk as a result of a serious bone fracture that occurred on August 26, 2022, and subsequent surgery in September of 2022. He remained at the care facility until at least December of 2023. Appellant's medical records show that appellant had various medical conditions that made it more likely than not that appellant was unable to respond to respondent's Demand within the time prescribed to do so, despite the exercise of ordinary business care and prudence. Appellant was not sacrificing the timeliness of one aspect of his affairs (responding to the Demand) to pursue other aspects; appellant was unable to manage daily life without assistance. (See *Appeal of Head and Feliciano*, *supra*.) Although appellant had a partner in 2023, appellant asserts that his partner was living in Reno, Nevada, and operating a business there at the time. As such, appellant's partner would not have received or known about the Demand, which was only addressed to appellant.

Given the seriousness of appellant's on-going, multiple conditions and the impact of these conditions on appellant's ability to conduct his day-to-day affairs, appellant has established reasonable cause for failing to respond to the Demand between June 6, 2023, and July 12, 2023. Accordingly, the Demand Penalty should be abated.

HOLDING

Appellant has established reasonable cause to abate the Demand Penalty imposed under R&TC section 19133.

DISPOSITION

Respondent's action denying appellant's Claim for refund is reversed.

Signed by:

L. Katrine Shelton

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L. Katrine Shelton
Administrative Law Judge

We concur:

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Steven Kim

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Steven Kim
Administrative Law Judge

DocuSigned by:

Teresa A. Stanley

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Teresa A. Stanley
Administrative Law Judge

Date Issued: 7/2/2026