

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:	)	OTA Case No. 250218678
C. J. BOSWORTH AND	)	
C. M. BOSWORTH	)	
	)	
	)	
	)	

OPINION

Representing the Parties:

For Appellants:	C. J. Bosworth and C. M. Bosworth
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For Respondent:	Vivian Ho, Attorney
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G. TURNER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, C. J. Bosworth and C. M. Bosworth (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants' claim for refund of \$2,701.50 for the 2019 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

Whether appellants have established reasonable cause to abate the demand penalty for the 2019 tax year.

FACTUAL FINDINGS

1. Respondent received information from third parties that appellant C. J. Bosworth may have received income in the 2019 tax year sufficient to require the filing of a tax return.
2. Respondent sent appellant C. J. Bosworth a Demand for Tax Return (Demand) notice on September 7, 2021, requesting that they file a tax return by October 13, 2021.
3. Respondent did not receive a 2019 tax return from appellants by the requested date and on November 5, 2021, respondent issued a Notice of Proposed Assessment (NPA), estimating appellant C. J. Bosworth's income based on federal wage reporting, and

- proposing total tax of \$17,747 and a demand penalty in the amount of \$4,436.75, for an amount due of \$12,038.94.
4. The assessment was not protested and went final.
 5. Respondent previously issued a Demand for the 2017 tax year on April 30, 2019, which appellant C. J. Bosworth failed to respond to, resulting in respondent issuing an NPA for that year on November 1, 2019.
 6. On July 5, 2024, appellants jointly filed a tax return, reporting total tax of \$10,428, California income tax withholdings of \$12,028, and a refund due of \$1,600.
 7. Respondent accepted the return as filed and adjusted the demand penalty to \$2,607 based upon the total tax reported on the return.
 8. Appellants have fully satisfied the resulting balance due through withholdings, installment payments, and other payments.
 9. On December 2, 2024, respondent denied appellants' claim for refund and this timely appeal followed.

DISCUSSION

R&TC section 19133 imposes a penalty when a taxpayer fails to file a return or provide information upon respondent's notice and demand to do so, unless the failure is due to reasonable cause and not willful neglect. The demand penalty is designed to penalize the failure of a taxpayer to respond to a request or a demand. (*Appeal of Jones*, 2021-OTA-144P.) Respondent will only impose a demand penalty if: (1) the taxpayer fails to respond to a current Demand in the manner prescribed; and (2) at any time during the preceding four tax years, respondent issued an assessment following the taxpayer's failure to timely respond to a Request for Tax Return or a Demand. (Cal. Code Regs., tit. 18, § 19133(b).)

Here, respondent issued the Demand on September 7, 2021, requesting that appellants file a return by October 13, 2021. Appellants did not file their return until July 5, 2024. This failure satisfies the first criteria for imposition of the penalty. Additionally on April 30, 2019, respondent issued a Request for Tax Return for the 2017 tax year, which was not timely responded to by appellant, whereupon respondent issued an assessment on November 1, 2019. Because respondent's assessment for the 2017 tax year was within the preceding four tax years of the Demand at issue here, the second criteria for imposition of the demand penalty was satisfied.

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.) The burden of proof requires proof by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(b).) A preponderance of the evidence means that the taxpayer must establish by documentation or other evidence that the circumstances he or she asserts are more likely than not to be correct. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

To establish that reasonable cause exists to support abatement of the demand penalty, a taxpayer must show that the failure to timely respond to the Demand occurred despite the exercise of ordinary business care and prudence. (*Appeal of Wright Capital Holdings, LLC*, 2019-OTA-219P.) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.)

Appellants assert that due to COVID-19 and their relocation to Texas in 2020, they were unable to file their 2019 tax return. Specifically, appellants assert that, due to appellant C. J. Bosworth's multiple COVID-19-related illnesses, including hospitalizations during 2021 and 2022, appellants were unable to timely file their 2019 tax return. Upon being subsequently contacted by respondent, appellants cooperated with their demands, filed the return as requested, and paid the outstanding balances due.

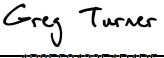
However, appellants' arguments do not establish reasonable cause. While illness may be grounds for finding reasonable cause, appellants must present credible and competent proof that the circumstances of the illness continuously prevented them from complying with the law. (*Appeal of Belcher*, 2021-OTA-284P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Porreca*, 2018-OTA-095P.) Appellants do not explain or provide any evidence to support how COVID-19 or their move to Texas prevented them from filing the return by the date included in respondent's Demand. Further, appellants do not provide medical records, doctor's affidavits, or any other information to support appellant-husband's medical conditions or explain why appellant-wife did not assist in the filing of appellants return. Because the Demand was issued to appellants and the return at issue was jointly filed, appellants must also establish why the spouse was unable to timely respond to the Demand. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) As such, appellant's argument is unpersuasive and fails to overcome their burden of proof to demonstrate reasonable cause to abate the demand penalty.

HOLDING

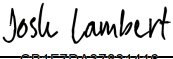
Appellants have failed to establish reasonable cause to abate the demand penalty for the 2019 tax year.

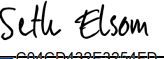
DISPOSITION

Respondent's action denying appellants' claim for refund is sustained.

Signed by:

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Greg Turner
Administrative Law Judge

We concur:

Signed by:

CB1F7DA37831416...
Josh Lambert
Administrative Law Judge

Signed by:

C04CD432E3254FD...
Seth Elsom
Hearing Officer

Date Issued: 8/12/2026