

EXHIBIT A

STATE BOARD OF EQUALIZATION



Appeal Name: Kamaldip S. Ghei

Case ID: 796875 ITEM #: B7

Date: 3-25-2015 Exhibit No: 3.6

TP FTB DEPT PUBLIC COMMENT

Appellant's Exhibit
B7
March 25, 2015
Kamaldip S. Ghei
796875

Date: March 13, 2015

CALIFORNIA STATE BOARD OF EQUALIZATION
BOARD PROCEEDINGS DIVISION

In the Matter of the Appeal of
Ghei, Kamaldip

Case ID No.: 796875

EXHIBIT A

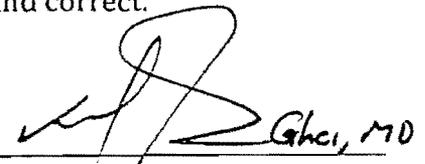
**TIMELINE AND SUMMARY OF COMMUNICATION
BETWEEN APPELLANT AND ACCOUNTANT**

	Kamal Ghei - Texts	Hemant Lavu - Texts
2/22/13	Text: Asked for availability to do taxes for 2011 and 2012	Text: Agreed. Requested docs
2/23/13	(Asked questions about taxes over phone)	
4/25/13	Informed Mr. Lavu that it took a while to organize tax papers for 2011 and they will be sent today. You should receive it in a few days.	Acknowledged
5/9/13	Inquired about tax papers. Informed Mr. Lavu that they were sent last week. Just wanted to confirm that you got them.	Mr. Lavu reported that he received the papers.
5/30/13	Checked in – "Did you get a chance to work on my taxes? I sent a detailed summary of expenses and deductions in the packet."	
5/31/13		Haven't finished returns yet. Had an Operating system error yesterday and my computer is frozen. Trying to get it fixed ASAP so I can finish your returns
5/31/13	"My deadline with Franchise Tax Board is June 3. They sent me a demand for tax return letter. I included the letter in my packet. I think deadline can be extended but I don't have the ID number. Can you extend it or send me the number and I can access it online?"	
		"Yup. I'll take care of the extension."
6/19/13	Any luck getting the computer fixed? Can go over tax return documents whenever you get the chance.	I will find out in next couple of days what they can recover for me.
6/28/13	Were you able to find out how much they could recover on your computer? Looking to refi my condo and need taxes done for 2011 to get new loan. Any chance you could get them done soon?	
6/30/13		Just got back from Cabo. I'll get your returns done this week.
	Thanks man. Call me later if you have questions. Hope you had a good trip.	Yup. Will do.
7/11/13	Any luck with the tax returns? Mortgage agent is asking for them.	
7/12/13		Ok. Gotcha. I complete them by Mon or Tues for sure before I head out to NYC on Wed.
7/18/13	Were you able to complete my tax return? Hoping to get it out soon.	I have everything with me here in NYC. I'm hoping to get them finished tomorrow bro.
8/1/13	Just checking in. Did you get a chance to finish my taxes?	No response

8/12/13	Can you give me a call? Want to talk about my taxes. Left you a voice message too.	
8/13/13		I am completing your returns now bro. Sorry about all the delays. You will have something to review shortly.
	Ok but you have been saying the same thing for many months. Can you give me a date that I can receive it by? Been a long time and I really want to submit them. Not trying to bug you but it has been a long time and I really want to submit them. Thx.	
		You'll receive it tonight. Sorry about all the false deadlines.
8/14/13	(Returns emailed to me)	
8/16/13		Did you get a chance to review the tax returns?
	Yeah I did. Had a few questions. (chatted on phone)	
8/18/13	Were you able to mail the tax return statements to me?	Yup. They were mailed out on Saturday.
	Great. I will work on 2012 taxes and get them to you shortly.	
8/24/13	(Got the tax returns. Had questions)	
8/26/13	Mailed the tax forms.	
9/26/13	Sent the following email to Hemant Lavu regarding Penalty.	Email: Yup. I will contact the FTB and resolve this.
	Email: Hey man.	
	I just got a letter from Franchise Tax Board saying that I owe them a penalty of \$2500. I called them to find out the reason. They told me that they had asked that I file by 6/2/13. Since I hadn't filed by then, they charged me a penalty even though they owed me a refund. I sent in everything to them by end of Aug soon after I received it from you.	
	Back in early May, I asked you about the filing date of 6/2/13 and the proposed penalty if I don't file by then. You had told me that the Franchise Tax Board does scare tactics and that we don't need to worry about it. When I asked if we needed to defer the 6/2/13 filing date further back, you said that it wasn't necessary and that you would take care of any deferrals if needed.	
	Obviously I am not happy with the assessed penalty of \$2500. I have attached the letter I got today, the original proposed penalty letter, and my deferral letter to 6/2/13. Is there anything we can do now?	
	Thanks,	
	Kamal	
9/27/13	Email: Thanks man. Can you let me know what happens? They want me to send the penalty payment in by Oct 8. I don't want to get hit with more fees.	Yup. I will get back to you early next week.
10/1/13	Hey man. Can u help resolve the Franchise tax board issue? Sent you an email too. When I called last week, they did not listen to me. Really concerned that I am getting charged fees.	Yup, will call them again this afternoon. Their lines were too busy yesterday & received a message to call back later in the week. (later in day) Spoke to them today, but the agent wasn't authorized to remove the penalty. I need to speak to a different department tomorrow.
10/2/13	Any luck with the Franchise Tax board?	
10/3/13	Wondering if you got a chance to talk to Franchise Tax Board? They want me to send in penalty pay by Oct 8. Are you able to talk to them? -- Thanks. Will touch base with you tomorrow.	Just got off phone. They want a letter sent to them asking for penalty removal. I have all the information for that. They also gave me another option to try as the tax return preparer. I will call that department tomorrow as they're closed already.
10/18/13		Sent letter to FTB. Tried calling a few times.

10/21/13		Spoke to the FTB again. Confirmed they received the letter I sent them. Also confirmed that your 2011 account has been paid in full. They received my request for penalty abatement. Let me know if receive any further correspondence from FTB.
12/4/13	Got letter from FTB saying they are denying the request for tax abatement. What should we do? Letter faxed to Mr. Lavu	
12/9/13	Did you get a chance to look at the letter? Anything we can do?	
12/13/13	Can you give me a call? (Discussed role of tax penalties and that Mr. Lavu had originally stated I would not get charged. He did not send an tax file extension as he did not believe they would charge a penalty.)	Talked with Hemant
1/10/14	Would you have time to talk about the tax appeal? The last days for appeal are coming up.	
1/22/13	I faxed a letter to you a few weeks ago. Would you have time to chat?	yeah lets talk this weekend
	Chatted on Feb 3	
31-Mar-14	Got package from State equalization board with instructions for appeals including booklet, discs. Sent them to Mr. Lavu	
	Also got a separate letter from legal help agency to help fight appeals with equalization board	
7/14/14	A law student was assigned to my case to appeal 2011 tax penalties. Just sent you an email about how he thinks the case can be won.	Just called you. I will sign whatever he needs.
7/15/14	Sent you an email about what type of letter he wants you to write. Would you be able to write it?	Just saw your email. I'll write the letter for him to edit.
	Thanks man. So he needs to send in his appea by Aug 2. He is hoping to get the letter from you to edit within a week or so. Would that be possible?	Yup. Not a problem
7/21/13	Did you get a chance to work on that letter? I wanted to get that letter to the law student this week.	
7/23/13	Any progress on the letter?	I'll finish up the letter in the next couple days.
7/29/13	Can you send me the letter? I need to send it to the law student so he can discuss it with his supervisor and edit the letter.	
7/29/13	Can you send me the letter as soon as you can? This is the last possible hope in getting my penalty money back.	Heading home now. Will finish your letter first thing.
		Sent you an email with letters.
7/31/13	Law student is having his professor review it. Will need to get it notarized.	
8/1/13	Just sent you the re- edited copy of the letter. Sign and notarize this second one.	
	Can you scan and email the letter?	

I, Kamaldip Ghei, do declare, under penalty of perjury, that the foregoing is true and correct.


 Dr. Kamaldip S. Ghei

EXHIBIT

B

LAW SUMMARY
REASONABLE CAUSE ABATEMENT
DELINQUENT FILING PENALTY
NOTICE AND DEMAND/FAILURE TO FURNISH PENALTY

The law provides that the Franchise Tax Board (FTB) shall impose a delinquent filing penalty when a taxpayer fails to file a tax return on or before its due date, unless the taxpayer establishes that the late filing was due to reasonable cause and was not due to willful neglect. (Revenue and Taxation Code section 19131.)

The law also provides that the FTB may impose a penalty when a taxpayer fails or refuses to furnish information requested by the FTB in writing, or fails or refuses to file a return subsequent to receiving a "Demand for Tax Return" (referred to as "notice and demand/failure to furnish information penalty"). This penalty may be abated if the taxpayer's failure to respond is due to reasonable cause and not willful neglect. (Revenue and Taxation Code section 19133.)

As applicable to individual taxpayers, the FTB will issue a "Demand for Tax Return" only if the FTB has proposed an assessment of tax against the taxpayer as provided for in Revenue and Taxation Code section 19087(a), at any time during the four-taxable-year period preceding the taxable year for which the current Demand for Tax Return is issued. (Cal. Code of Regs., tit. 18, section 19133.)

1. The Burden of Proof is on the Taxpayer to Establish Reasonable Cause For Abatement of Either Penalty

When the FTB imposes a delinquent filing or notice and demand/failure to furnish information penalty, the law presumes that the penalty was imposed correctly. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509, 201 P.2d 414.)

The burden of proof is on the taxpayer to show that reasonable cause exists to support abatement of the penalty. (*Appeal of David A. and Barbara L. Beadling*, 77-SBE-021, February 3, 1977.)

To establish reasonable cause, a taxpayer must show that the failure to file the return and/or reply to the notice and demand or request for information occurred despite the exercise of ordinary business care and prudence. (*Appeal of Stephen C.*

Bieneman, 82-SBE-148, July 26, 1982; *Appeal of Howard G. and Mary Tons*, 79-SBE-027, January 9, 1979.) The taxpayer's reason for failing to file and/or failing to respond to the notice and demand or request for information must be such that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Joseph W. and Elsie M. Cummings*, 60-SBE-040, December 13, 1960; *Appeal of J.B. Ferguson*, 58-SBE-024, September 15, 1958.)

In order to overcome the presumption of correctness of the penalties, the taxpayer must provide credible and competent evidence to support the claim of reasonable cause; otherwise the penalties will be not be abated. (*Appeal of James C. and Monablanche A. Walshe*, 75-SBE-073, October 20, 1975; *Appeal of David A. and Barbara L. Beadling*, 77-SBE-021, February 3, 1977.)

2. Taxpayer's Responsibility to File Return and/or to Respond to Notice and Demand or Request for Information

Even if the taxpayer is unaware of a filing requirement, ignorance of the law is not an excuse for failing to file a timely return. (*Appeal of J. Morris and Leila G. Forbes*, 67-SBE-042, August 7, 1967; *Appeal of Diebold, Incorporated*, 83-SBE-002, January 3, 1983.)

Each taxpayer has a personal, non-delegable obligation to file the tax return by the due date, to respond to a notice and demand from the FTB that a return be filed, and to furnish information requested by the FTB. (*Appeal of Thomas K. and Gail G. Boehme*, 85-SBE-134, November 6, 1985; *Appeal of Roger D. and Mary Miller*, 86-SBE-057, March 4, 1986.)

A taxpayer's reliance on an agent, such as an accountant or a tax attorney, to file the return by the due date, to respond on the taxpayer's behalf to a notice and demand from the FTB, and/or to reply to a request for information by the FTB, is not reasonable cause. (*United States v. Boyle* (1985) 469 U.S. 241, 83 L.Ed.2d 622.)

3. Difficulty in Obtaining Information or Documents Needed to File the Return, Respond to the Notice and Demand, Or Respond to the Request for Information

Generally, a taxpayer's inability to file a return by the due date, provide a timely response to a notice and demand, or furnish requested information because of lack of necessary information or documents, is not considered reasonable cause. (*Appeal of William T. and Joy P. Orr*, 68-SBE-010, February 5, 1968.) The fact that tax information is lost, lacking, inaccurate, or difficult to obtain is insufficient to meet the taxpayer's burden of establishing reasonable cause. (*Appeal of Stephen C. Bieneman*, 82-SBE-148, July 26, 1982; *Appeal of Elmer R. and Barbara Malakoff*, 83-SBE-140, June 21, 1983; *Appeal of Roger W. Sleight*, 83-SBE-244, October 26, 1983.)

In order to establish reasonable cause, the taxpayer must establish why a timely return could not have been filed and/or why a timely response to a notice and demand or request for information could not have been provided without the missing information. The taxpayer also must establish the efforts the taxpayer made to obtain the information in time to file the return and/or to respond to the notice and demand or request for information.

When the taxpayer receives a notice and demand, the taxpayer should respond to the notice and demand and file the return based on information that is available to the taxpayer at that time. The taxpayer then can file an amended return when he or she receives the missing information.

4. Illness/Personal Difficulties of the Taxpayer/Work Pressures

Illness or other personal difficulties which prevent a taxpayer from filing a timely return or from responding to a notice and demand or request for information may be considered reasonable cause in some cases. However, if the difficulties simply cause the taxpayer to sacrifice the timeliness of one aspect of the taxpayer's affairs to pursue other aspects, the taxpayer must bear the consequences of that choice. (*Appeal of W.L. Bryant*, 83-SBE-180, August 17, 1983; *Appeal of Michael J. and Diane M. Halaburka*, 85-SBE-025, April 9, 1985; *Appeal of William T. and Joy P. Orr*, 68-SBE-010, February 5, 1968.)

In order to show reasonable cause, the taxpayer must present credible and competent proof that the circumstances of the illness or other personal difficulty completely prevented the taxpayer from filing a timely return and/or complying with the notice and demand or request for information. (*Appeal of Allen L. and Jacqueline M. Seaman*, 75-SBE-080, December 16, 1975; *Appeal of Kerry and Cheryl James*, 83-SBE-009, January 3, 1983.)

A taxpayer's inability to file a return and/or respond to a notice and demand or request for information in a timely fashion because of the press of business affairs or work pressures is not reasonable cause. (*Appeal of Loew's San Francisco Hotel Corp.*, 73-SBE-050, September 17, 1973; *Appeal of William T. and Joy P. Orr*, 68-SBE-010, February 5, 1968; *Appeal of Elmer R. and Barbara Malakoff*, 83-SBE-140, June 21, 1983.)

5. Complexity of the Tax Law

Complexity of the tax law which leads to a delay in computing tax liability, and therefore a delay in filing the return and/or responding to a notice and demand or request for information, is not reasonable cause. (*Appeal of Philip C. and Anne Berolzheimer*, 86-SBE-172, November 19, 1986; *Appeal of Roger W. Sleight*, 83-SBE-244, October 26, 1983.)

However, if a taxpayer relies on improper advice of an accountant or tax attorney as to a matter of tax law, such as whether the taxpayer has a tax liability, failing to file a return in reliance on this advice may be considered reasonable cause if certain conditions are met. (*Rohrbaugh v. United States* (7th Cir. 1979) 611 F.2d 211, as cited in *United States v. Boyle* (1985) 469 U.S. 241, 83 L.Ed.2d 622.) These conditions include: (1) the person relied on by the taxpayer is a tax professional with competency in the subject tax law, and (2) the tax professional's advice is based on the taxpayer's full disclosure of the relevant facts and documents.

6. Taxpayer Has the Burden to Show that the Notice and Demand or Request for Information was Not Mailed to the Taxpayer's Last Known Address

If the taxpayer claims that he or she did not receive the notice and demand or request for information, the taxpayer bears the burden of proving that the notice and demand/request for information was not mailed to the taxpayer's last known address.

(*Grencewicz v. Commissioner*, T.C. Memo. 1990-597; *Mollet v. Commissioner* (1984) 82 T.C. 618, 625, affd. without published opinion (11th Cir. 1985) 757 F.2d 286.) What is relevant is FTB's knowledge of the taxpayer's last known address, rather than the taxpayer's actual most current address. (*Reding v. Commissioner*, T.C. Memo. 1990-278 [59 T.C.M. 793], affd. T.C. Memo. 1990-536; *Freiling v. Commissioner* (1983) 81 T.C. 42, 49.) If the taxpayer moves after filing his or her return, the taxpayer must take the necessary steps to insure receipt of his or her mail. (*Appeal of Winston R. Schwyhart*, 75-SBE-035, April 22, 1975; *Appeal of Terry R. Lash*, 86-SBE-021, February 4, 1986.)

In order for the notice and demand penalty to be proper, the law provides that it is not necessary for the FTB to prove that the notice and demand letter was received by the taxpayer. (*United States v. Zolla* (9th Cir. 1984) 724 F.2d 808, 810, cert. denied, 469 U.S. 830, 105 S.Ct. 116.) It is sufficient that the notice and demand letter was mailed to the taxpayer's last known address, and that it was not returned to the FTB by the United States Postal Service.

7. Taxpayer Has the Burden to Show That a Timely Return was Filed or That a Timely Response was Provided to a Notice and Demand or Request for Information

The taxpayer bears the burden of proof on a claim that a delinquent filing penalty and/or a notice and demand/failure to furnish information penalty should not be imposed because the taxpayer filed a timely return or provided a timely response to a notice and demand or request for information. (*Appeal of Thomas T. Crittenden*, 74-SBE-043, October 7, 1974; *Appeal of La Salle Hotel Co.*, 66-SBE-071, November 23, 1966.)

8. Ultimate Determination That There is No Tax Liability

The fact that the FTB ultimately determines, after review of a taxpayer's delinquent return, that the taxpayer's tax liability has been satisfied by allowable credits (such as withholding) or previous payments (such as payments of estimated tax) does not excuse the failure to file a return in response to a notice and demand. (*Appeal of Elmer R. and Barbara Malakoff*, 83-SBE-140, June 21, 1983; *Appeal of Sal J. Cardinalli*, 81-SBE-

018, March 2, 1981; *Appeal of Frank E. and Lilia Z. Hublou*, 77-SBE-102, July 26, 1977.)

9. Computation of Notice and Demand/Failure to Furnish Information and Delinquent Filing Penalties

The notice and demand/failure to furnish information penalty is computed at twenty-five percent (25%) of the amount of the taxpayer's total tax liability, which is determined without regard to payments. (*Appeal of Elmer R. and Barbara Malakoff*, 83-SBE-140, June 21, 1983; *Appeal of Eugene C. Findley*, 86-SBE-091, May 6, 1986; *Appeal of Robert Scott*, 83-SBE-094, April 5, 1983.)

The delinquent filing penalty is computed at five percent (5%) of the tax due, after allowing for timely payments, for every month that the return is late, up to a maximum of twenty-five percent (25%). (Revenue and Taxation Code section 19131.)

EXHIBIT

C

State of California
Franchise Tax Board

Penalty Reference Chart

Please use this chart for reference purposes only. We list penalty codes by Revenue and Taxation Code (R&TC) sections and reference comparable Internal Revenue Code (IRC) sections. These penalties reflect the law as enacted on September 21, 2011, for taxable years beginning on or after January 1, 2011.

Penalty Name	R&TC Section	IRC Section	Penalty Reason	Computation
Limited Liability Company (LLC) Fee Estimate Penalty	17942(d)(2)	None	Underpayment of estimated fee.	10% of the underpayment.
			Exceptions - Safe harbor-100% of prior year.	
Tax on Joint Return Exceeds Tax on Separate Returns	18530	6013(b)(5)	Tax on a joint return exceeds tax shown on separate returns, due to negligence or intentional disregard of rules, or fraud. In lieu of penalties provided by Section 19164(a) and (b). 20% of total amount of excess if attributable to negligence/intentional disregard of rules.	75% of excess if attributable to fraud.
			Exceptions - None.	
Information Return From Owner of Real Property	18642	6045	Owners and transferors failing to file information return relating to interest in real property by the due date.	Penalty under 19183 applies. If information return not filed within 60 days of due date, the deduction of certain property-related expenses are disallowed.
			Exceptions - Reasonable cause and not willful neglect.	
Withholding Penalties	18668(a)	3403, 1461	Any person required to withhold tax, but fails to do so.	The greater of: <ul style="list-style-type: none"> • The actual amount withheld or • Payee's total tax liability (before application of any payments and credits), not to exceed the required 7% withholding amount.
			Exceptions - Reasonable cause.	
Withholding Penalties – Real Estate	18668(d)	3403, 1461	Any person required to withhold tax from the sale of real property when properly notified, but fails to do so.	The greater of: <ul style="list-style-type: none"> • \$500 or • 10% of the amount required to be withheld.
			Exceptions - Reasonable cause.	

Franchise Tax Board
Penalty Reference Chart

Penalty Name	R&TC Section	IRC Section	Penalty Reason	Computation
Withholding Penalties – Real Estate Escrow Person	18668(e)(1)		Any real estate escrow person failing to provide written notification of withholding requirement to a transferee/buyer of a California real property interest.	The greater of: <ul style="list-style-type: none"> • \$500 or • 10% of the amount required to be withheld.
			Exceptions - Reasonable cause.	
Withholding Penalties – Real Estate False Certificate	18668(e)(5)		Any transferor of California real property who knowingly files a false exemption certificate (Form 593-C, <i>Real Estate Withholding Certificate</i>) to avoid withholding.	The greater of: <ul style="list-style-type: none"> • \$1,000 or • 20% of the amount required to be withheld.
			Exceptions - Reasonable cause.	
Withholding Penalties	18669	None	Successor on a sale, transfer, or disposition of a business for failing to pay required amounts or failing to withhold or to pay withheld amounts.	10% of amount not paid or personal liability for amounts not withheld or withheld amounts not paid.
			Exceptions - None.	
Electronic Funds Transfer (EFT) Penalty	19011(c)	6302	Any person required to remit payment by EFT, but who makes payment by other means.	10% of the amount paid by non-EFT.
			Exceptions - Reasonable cause and not willful neglect.	
Electronic Payment Requirements for Individuals	19011.5	None	Failure by individuals, whose tax liability is greater than \$80,000 or who make an estimated tax or extension payment that exceeds \$20,000, to remit their tax payments electronically.	1% of the amount paid.
			Exceptions - Reasonable cause and not willful neglect.	
Failure to File a Return/Late Filing Penalty	19131	6651	Any taxpayer who is required to file a return, but fails to do so by the due date.	5% of the tax due, after allowing for timely payments, for every month that the return is late, up to a maximum of 25%. For fraud, substitute 15% and 75% for 5% and 25%, respectively. For individuals and fiduciaries, minimum penalty is the lesser of: <ul style="list-style-type: none"> • \$135 or • 100% of the tax required to be shown on the return.
			Exceptions - Reasonable cause and not willful neglect.	

Franchise Tax Board
Penalty Reference Chart

Penalty Name	R&TC Section	IRC Section	Penalty Reason	Computation
Failure to Pay Tax/Late Payment Penalty	19132	6651	Taxpayer failing to pay tax by the due date. This penalty is not imposed if, for the same tax year, the sum of Sections 19131 and 19133 penalties are equal to or greater than this penalty.	5% of the total tax unpaid plus 1/2 of 1% for every month the payment of tax was late up to 40 months. Not to exceed 25% of the total unpaid tax.
			Exceptions - Reasonable cause and not willful neglect.	
Failure to Provide Information Requested/ Failure to File a Return Upon Demand	19133	None	Any taxpayer for failing to provide requested information, or failing to file a return after notice and demand.	25% of total tax liability assessed without regard to any payments or credits.
			Exceptions - Reasonable cause and not willful neglect.	
Penalty for Failure to Make a Small Business Stock Report	19133.5	6652(k)	Taxpayer for failing to make a small business report.	\$50 for each report. \$100 per report if the failure is due to negligence or intentional disregard.
			Exceptions - Reasonable cause and not willful neglect.	
Dishonored Payments	19134	6657	Any taxpayer who makes a payment by check that is dishonored. Includes payments made by credit card or EFT.	For payments received after January 1, 2011: <ul style="list-style-type: none"> An amount equal to 2% of the amount of the dishonored payment, or If the amount of the check is less than \$1,250, \$25 or the amount of the check, whichever is less.
			Exceptions - Reasonable cause and good faith.	
Unqualified or Suspended Corporation Doing Business in this State	19135	None	Any foreign corporation which fails to qualify to do business, or whose powers have been forfeited, or any domestic corporation which has been suspended, and is doing business in this state, within the meaning of Section 23101.	\$2,000 per taxable year.
			Exceptions - Reasonable cause and not willful neglect.	

Franchise Tax Board
Penalty Reference Chart

Penalty Name	R&TC Section	IRC Section	Penalty Reason	Computation
Underpayment of Estimated Tax (Addition to Tax)	19136 et seq., 19142-19151	6654	Any taxpayer who fails to pay estimated tax in the required installments.	An amount determined by applying the underpayment rate specified in Section 19521 to the amount of the underpayment for the period of the underpayment.
			Exceptions - (1) Safe harbors under 6654 as modified. (2) Underpayment created or increased by any provision of law that is chaptered during and operative for the taxable year of the underpayment (3) underpayment was created or increased by the disallowance of a credit under Section 17053.80(g) or 23623(g).	
Large Corporate Understatement of Tax	19138	None	When a corporation has an understatement of tax for: Tax years beginning January 1, 2003, through December 31, 2009, that exceeds \$1 million. Tax years beginning January 1, 2010, that exceeds the greater of: <ul style="list-style-type: none"> • \$1 million. • 20% of tax shown on original return or shown on amended return filed on or before original or extended due date of return for taxable year. 	20% of the understatement of tax.
			Exceptions - Understatement is attributable to (1) a change in law after earlier of date return is filed or extended due date of return or (2) reasonable reliance on legal ruling by the Chief Counsel.	
Corporation Officer Statement Penalty	19141	None	Upon certification by the Secretary of State, penalty for taxpayer's failure to provide a Statement of Information.	\$250 upon certification by the Secretary of State under Corporations Code Sections 2204 and 17653. \$50 upon certification by the Secretary of State under Corporations Code Sections 6810 and 8810.
			Exceptions - None.	

Franchise Tax Board
Penalty Reference Chart

Penalty Name	R&TC Section	IRC Section	Penalty Reason	Computation
Information With Respect to Certain Foreign Corporations (IRS Form 5471, Information Return of U.S. Persons With Respect To Certain Foreign Corporations)	19141.2	6038	Failure to file and furnish certain information about certain foreign corporations.	\$1,000 for each annual accounting period. \$1,000 for each 30-day period up to a maximum of \$24,000 when failure continues after 90-day of notification.
			Exceptions - Reasonable cause and not willful neglect.	
Failure to File and Furnish Information About Foreign-Owned Corporations (IRS Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business)	19141.5	6038A	Failure to file and furnish information or to maintain required records about foreign-owned corporations, under IRC Section 6038A.	\$10,000 for each taxable year for which the taxpayer fails to file required information or fails to maintain the required records. \$10,000 for each 30-day period when failure continues after 90-day of notification.
			Exceptions - Reasonable cause.	

Franchise Tax Board
Penalty Reference Chart

Penalty Name	R&TC Section	IRC Section	Penalty Reason	Computation
Failure to File - Notice of Certain Transfers to Foreign Corporation (IRS Form 926, Return by a U.S. Transferor of Property to a Foreign Corporation)	19141.5	6038B	Failure to file/furnish information records about transfers or distributions to foreign-owned corporations, under IRC Section 6038B.	10% of fair market value at time of exchange, not to exceed \$100,000 unless failure due to intentional disregard. Plus recognition of gain required as if property sold based on that value.
			Exceptions - Reasonable cause and not willful neglect.	
Failure to File or Furnish Information About Foreign Corporations Engaged in U.S. Business (IRS Form 5472)	19141.5	6038C	Failure to file and furnish information or to maintain required records about a foreign corporation engaged in a trade or business within the U.S., under IRC Section 6038C.	\$10,000 for each taxable year for which the taxpayer fails to provide the required information or fails to maintain the required records. \$10,000 for each 30-day period, when failure continues after 90-day of notification.
			Exceptions - Reasonable cause.	
Failure to Retain Unitary Records Penalty	19141.6	None	Any taxpayer engaged in a unitary business that fails to maintain records relating to unitary combination, apportionment and allocation, and application of federal law.	\$10,000 for each year that the taxpayer fails to maintain or causes another to fail to maintain the required records. If the failure continues beyond 90 days of notice from us, an additional penalty of \$10,000 for each 30-day period is imposed up to a maximum of \$50,000 if the taxpayer's conduct is not willful.
			Exceptions - None.	

Franchise Tax Board
Penalty Reference Chart

Penalty Name	R&TC Section	IRC Section	Penalty Reason	Computation
Accuracy Related Penalty	19164	6662	Any underpayment of tax required to be shown on a return, attributable primarily to negligence or disregard of rules and regulations or a substantial understatement of income tax.	20% of the underpayment of tax. 40% unless certain exceptions apply for amnesty eligible years, which are tax years prior to January 1, 2003.
			Exceptions - The defenses to an accuracy related penalty include (1) substantial authority, (2) adequate disclosure and reasonable basis or (3) reasonable cause and good faith, depending on the grounds for imposing the penalty. In addition, see underlying regulation regarding unitary and business and nonbusiness income determinations.	
Accuracy Related Penalty – Substantial Valuation Misstatement	19164	6662(e)(1)	A substantial valuation misstatement exists when the value (or adjusted basis) of any property claimed on a return is 150% or more of the correct amount. Transactional Penalty – The price reported for any property or services claimed on a return is 200% or more (or 50% or less) of the correct figure. Net Adjustment Penalty – When the transfer price of any property or services increases the taxable income for the taxable year by the lesser of \$5 million or 10% of the taxpayer's gross receipts.	20% of the portion of the underpayment of tax attributable to the misstatement. No penalty imposed unless the portion of the underpayment exceeds \$5,000 (\$10,000 for corporations other than S corporations or personal holding companies).
			Exceptions - Reasonable cause and good faith. (See Treasury Regulation Section 1.6664-4 and 1.6662-6 for special rules.) There is no disclosure exception to this penalty. Treasury Regulation Section 1.6662-5(a). When there is an underpayment due to overstated charitable deduction property, there are special rules for reasonable cause under IRC Section 6664(c) for returns filed after January 1, 2010.	
Accuracy Related Penalty - Increase in Penalty in Case of Gross Valuation Misstatements	19164	6662(h)	A gross valuation misstatement exists if: The value (or adjusted basis) of any property on a return is 200% or more of the correct amount, or The price for any property or service claimed on a return is 400% or more (or 25% or less) of the correct price, or The net Section 482 adjustment exceeds the lesser of \$20 million or 20% of the taxpayer's gross receipts.	40% of the portion of the underpayment of tax attributable to the misstatement. No penalty imposed unless the amount of the underpayment exceeds \$5,000 (\$10,000 for corporations other than S corporations or personal holding companies).
			Exceptions - Reasonable cause and good faith. (See Treasury Regulation Section 1.6664-4 and 1.6662-6(d).) There is no disclosure exception to this penalty. Treasury Regulation Section 1.6662-5(a). When there is an underpayment due to overstated charitable deduction property, there are special rules for reasonable cause under IRC Section 6664(c) for returns filed after January 1, 2010.	

Franchise Tax Board
Penalty Reference Chart

Penalty Name	R&TC Section	IRC Section	Penalty Reason	Computation
Fraud Penalty	19164	6663	When there is clear and convincing evidence to prove that some part of the underpayment of tax was due to civil fraud. Such evidence must show the taxpayer's intent to evade tax that the taxpayer believed to have owed.	75% of the underpayment attributable to civil fraud.
			Exceptions - Reasonable cause and good faith.	
Reportable Transaction Accuracy Related Penalty - Disclosed Reportable Transaction	19164.5	6662A	Any disclosed reportable transaction understatement for tax years beginning on or after January 1, 2005.	20% of the understatement attributed to the reportable or listed transaction if the transaction is adequately disclosed on the return.
			Exceptions - Chief Counsel relief for reportable transactions other than listed transactions. The standards in R&TC Section 19772 apply.	
Reportable Transaction Accuracy Related Penalty - Undisclosed Reportable Transaction	19164.5	6662A(c)	Any undisclosed reportable transaction understatement for tax years beginning on or after January 1, 2005.	30% of the understatement attributed to the reportable or listed transaction if the transaction is not adequately disclosed on the return.
			Exceptions - Chief Counsel relief for reportable transactions other than listed transactions. The standards in R&TC Section 19772 apply.	
Preparer Penalty	19166(a)	6694(a)(1)	When a preparer completes a return or claim for refund that results in the taxpayer's understatement based on an unreasonable position and the preparer knew or reasonably should have known of the unreasonable position.	Greater of: \$250 or 50% of income derived (or to be derived) by the tax preparer with respect to each return or claim.
			Exceptions - The preparer can avoid the penalty (1) if the position is adequately disclosed and has a reasonable basis; (2) if the position is not disclosed and is not a tax shelter and there is substantial authority for the position; or (3) for a tax shelter position defined in IRC Section 6662(d) or a reportable transaction under IRC Section 6011, if the preparer reasonably believes that the position is more-likely-than-not correct. Also reasonable cause and good faith. If preparer pays at least 15% of the penalty within 30 days of the bill and files a claim for refund, the preparer may file an action in court within 30 days of the claim denial or deemed denial.	

Franchise Tax Board
Penalty Reference Chart

Penalty Name	R&TC Section	IRC Section	Penalty Reason	Computation
Preparer Penalty - Reportable Transactions, Listed Transactions or Gross Misstatements	19166(b)(2)	6694	When a preparer completes a return or claim for refund that results in the taxpayer's understatement based on an undisclosed reportable transaction, a listed transaction, or a gross misstatement.	\$1,000 or 50% of the income derived (or to be derived) with respect to each return or claim.
			Exceptions - Standard to avoid the penalty is more-likely-than-not. If preparer pays at least 15% of the penalty within 30 days of the bill and files a claim for refund, the preparer may file an action in court within 30 days of the claim denial or deemed denial.	
Understatement of a Taxpayer's Liability by Tax Preparer - Willful or Reckless Conduct	19166(a)	6694(b)	If the understatement of the taxpayer's tax is due to the preparer's willful attempt to understate the liability or any reckless or intentional disregard of rules or regulations.	The greater of \$5,000 or 50% of the income derived (or to be derived) with respect to each return or claim.
			Exceptions - A preparer is not considered to have recklessly or intentionally disregarded a rule or regulation if the position has a reasonable basis and is adequately disclosed. If a regulation is at issue, there must be a good faith challenge. If the position is contrary to a revenue ruling or notice, the substantial authority standard applies. The same rules of paying 15% and filing a claim and suit in court apply.	
Additional Penalties - Failure to Furnish Copy to Taxpayer	19167(a)	6695(a)	Failure to furnish a completed copy of return or claim.	\$50 per failure, not to exceed \$25,000 during any calendar year.
			Exceptions - Reasonable cause and not willful neglect.	
Additional Penalties - Failure to Furnish Identifying Number	19167(b)	6695(c)	Failure to include on a return or claim the identifying number of the preparer, employer or both.	\$50 per failure, not to exceed \$25,000 during any calendar year.
			Exceptions - Reasonable cause and not willful neglect.	
Additional Penalties - Failure to Retain Copy or List	19167(c)	6695(d)	Failure to retain a completed copy of a return or claim for 3 years or a list with the taxpayer's name and identifying number and make the return or list available for inspection by FTB.	\$50 per failure, not to exceed \$25,000 during any calendar year.
			Exceptions - Reasonable cause and not willful neglect.	

Franchise Tax Board
Penalty Reference Chart

Penalty Name	R&TC Section	IRC Section	Penalty Reason	Computation
Additional Penalties - Failure to Register as a Tax Preparer with California Tax Education Council (CTEC)	19167(d)(1) and (2)	None	Failure to register with the CTEC.	\$2,500 for first failure to register. \$5,000 for other than first failure.
			Exceptions - Reasonable cause and not willful neglect. The penalty may be waived if the preparer provides proof of registration to us within 90 days of mail date of notice. Certain persons are exempt from the requirement to register, such as licensed certified public accountants (CPA) and licensed attorneys.	
Negotiation of Taxpayer's Check by Tax Preparer	19169, 20645.7	6695(f)	If the tax preparer endorses or otherwise negotiates a check for the refund of tax that is issued to a taxpayer, if the person was the preparer of the return or claim that gave rise to the refund check.	\$250 for each endorsement or negotiation of a check.
			Exceptions - The preparer will not be considered to have endorsed a check solely as a result of putting the taxpayer's name to a check for the purpose of depositing the check into the taxpayer's account, if authorized by the taxpayer.	
Failure to File Electronically	19170	None	If a preparer that is subject to R&TC Section 18621.9 fails to file returns electronically.	\$50 for each failure.
			Exceptions - Reasonable cause and not willful neglect. Reasonable cause can be established by the taxpayer electing not to file electronically.	
Failure of Partnership to Comply with Filing Requirements	19172	6698	If a partnership: Fails to file a timely return (FTB 565 <i>Partnership Return of Income</i> / FTB 568, <i>Limited Liability Return of Income</i>), including any extensions, or Files a return (FTB 565/568) that fails to include information required under R&TC Section 18633 or 18633.5.	\$18 multiplied by the number of persons who were partners/members during any part of that taxable year for each month during which that failure continues, not to exceed 12 months.
			Exceptions - Reasonable cause.	

Franchise Tax Board
Penalty Reference Chart

Penalty Name	R&TC Section	IRC Section	Penalty Reason	Computation
Failure of S Corporation to Comply with Filing Requirements	19172.5	6699	If an S Corporation: Fails to file a timely return, including extensions, or Files a return that fails to include information required under R&TC Section 18601.	\$18 multiplied by the number of persons who were shareholders during any part of that taxable year for each month during which that failure continues, not to exceed 12 months.
			Exceptions - Reasonable cause.	
Failure to Comply With Request to Provide Lists - Reportable Transactions	19173(a)	6708	Failing to provide lists of advisees with respect to reportable transactions (other than a listed transaction) to FTB within 20 business days after FTB requests the list.	\$10,000 for each day of such failure after the 20th business day.
			Exceptions - Chief Counsel relief for reportable transactions other than listed transactions.	
Failure to Comply With Request - Material Advisors With Respect to Listed Transactions	19173(b)	None	Material advisors who fail to meet the requirements of R&TC Section 18648(d)(1) with respect to a listed transaction.	\$100,000 or 50% of gross income that the material advisor derived from that activity whichever is greater.
			Exceptions - The penalty does not apply if it is shown that the additional information required was not identified in our notice prior to the date the transaction/shelter was entered into. No Chief Counsel review for listed transactions.	
Failure to Report Personal Service Remuneration	19175	None	Any person or entity who fails to report amounts paid as remuneration for personal services may be liable for a penalty.	The maximum personal income tax rate multiplied by the unreported amounts paid as remuneration for personal services. In addition, at our discretion, we may disallow the deduction for amounts paid as remuneration.
			Exceptions - None.	
Statement That Results in Under-Withholding	19176	6682	Statement that results in a decrease in amounts deducted and withheld, if there was no reasonable basis for the statement.	\$500 for the statement.
			Exceptions - Penalty may be waived if the tax paid by the individual for the taxable year is equal to or less than the sum of both certain credits allowed and payments of estimated tax.	

Franchise Tax Board
Penalty Reference Chart

Penalty Name	R&TC Section	IRC Section	Penalty Reason	Computation
Promotion of Abusive Tax Shelter	19177	6700	Any person who engages in the organization of, or sale of any interest in, a partnership or other entity, an investment plan or arrangement, or any other plan or arrangement, if the person makes, furnishes, or causes another person to make or furnish: A false or fraudulent tax benefits statement as to a material matter; or A gross valuation overstatement as to a material matter.	\$1,000 or 100% of the gross income derived (or to be derived) by the person from the activity whichever is less. If the activity on which the penalty is imposed involves a false or fraudulent statement as to any matter pertaining to the tax shelter plan or arrangement, the penalty is 50% of the gross income the promoter derived (or was to derive) from promoting the activity.
			Exceptions - If a penalty is imposed with respect to a gross valuation overstatement, the penalty may be waived on a showing that there was a reasonable basis for the valuation and the valuation was made in good faith.	
Aiding and Abetting Understatement of Tax Liability	19178	6701	Aiding and abetting understatement of tax.	\$1,000. \$10,000 if the tax liability relates to a corporation. Only one penalty per person per period.
			Exceptions - None.	
Filing Frivolous Return	19179(a) and (b)	6702(a)	Filing a frivolous return.	\$5,000 if the return does not contain sufficient information or is based on a frivolous position or reflects an attempt to delay or impede administration of the tax laws.
			Exceptions - Chief Counsel relief.	
Frivolous Submissions	19179(d)	6702(b)	Filing a specified frivolous submission.	\$5,000 for "specified frivolous submissions."
			Exceptions - Chief Counsel relief.	
Failure to Comply With Original Issue Discount Reporting Requirements	19181	6706	Failing to comply with original issue discount reporting requirements.	\$50 for each failure to show information on debt instrument. 1% of the aggregate issue price of each issue, up to a maximum of \$50,000 for each issue for failure to furnish information to taxing agency.
			Exceptions - Reasonable cause and not willful neglect.	

Franchise Tax Board
Penalty Reference Chart

Penalty Name	R&TC Section	IRC Section	Penalty Reason	Computation
Failure to Furnish Information Regarding Reportable Transaction	19182	6707	A material advisor who fails to file a return with respect to any reportable transaction before the date prescribed or who files false or incomplete information with respect to such transactions.	\$50,000; for listed transactions, equal to the greater of: \$200,000 or 50% (or 75% if failure is intentional) of the gross income derived by such a person.
			Exceptions - Penalty will not apply if it is shown that the additional required information was not identified in our notice issued prior to the date of the transaction. Chief Counsel relief for reportable transactions other than listed transactions.	
Failure to Disclose Quid Pro Quo Contributions	19182.5	6714	For each contribution where the organization fails to make the required disclosure.	\$10 for each contribution, but the total penalty with respect to a particular fundraising event or mailing shall not exceed \$5,000.
			Exceptions - Reasonable cause. No penalty imposed if requirements under IRC Section 6115 are met.	
Failure to File Correct Information Return	19183(a)	6652, 6721-6724	Failing to file information returns or failure to include all required information.	\$50 for failure to file correct information returns, with respect to which such a failure occurs. Shall not exceed \$250,000 during any calendar year; \$100,000 for persons with gross receipts of not more than \$5 million. Higher penalties (without reduction for correction) apply in the case of intentional disregard, depending on type of information return.
			Exceptions - De minimis failure exception. Reasonable cause and not willful neglect.	
Failure to File Correct Information Return	19183(a)	6721(b)(1)	Reduction in failure to file correct information return penalty when corrected within 30 days.	\$15 for failure to file correct information returns, with respect to which such a failure occurs. Shall not exceed \$75,000 during any calendar year. \$25,000 for persons with gross receipts of not more than \$5 million.
			Exceptions - Reasonable cause and not willful neglect.	
Failure to File Correct Information Return	19183(a)	6721(b)(2)	Reduction in failure to file correct information return penalty when corrected on or before August 1.	\$30 for failure to file correct information returns, with respect to which such a failure occurs. Shall not exceed \$150,000 during any calendar year. \$50,000 for persons with gross receipts of not more than \$5 million.
			Exceptions - Reasonable cause and not willful neglect.	

Franchise Tax Board
Penalty Reference Chart

Penalty Name	R&TC Section	IRC Section	Penalty Reason	Computation
Failure to File Correct Information - Failure to Furnish Correct Payee Statements	19183(b)(1)	6722(a)	Failure to furnish correct payee statements.	\$50 for each statement, up to a maximum of \$100,000 for each calendar year. \$100, or, if greater, 5% or 10% of the aggregate amount of the items required to be reported correctly, depending on the type of return required, with respect to each such failure for intentional disregard. The \$100,000 limitation in IRC Section 6722(a) shall not apply.
			Exceptions - Reasonable cause and not willful neglect.	
Failure to File Correct Information - Failure to Comply With Other Information Reporting Requirements	19183(c)	6723	Failure to comply with other information reporting requirements.	\$50 for each such failure, up to a maximum of \$100,000 for each calendar year.
			Exceptions - Reasonable cause and not willful neglect.	
Failure to File Correct Information - Failure to Provide Written Explanation to Recipients of Distributions Eligible for Rollover Treatment.	19183(e)	None	Failure to provide written explanation to recipients of distributions eligible for rollover treatment pursuant to IRC Section 402(f).	\$10 for each failure, up to a maximum of \$5,000 for each calendar year after notice and demand.
			Exceptions - Reasonable cause and not willful neglect.	
Failure to File Report Regarding Tax Deferred Savings Accounts	19184	6693	Failure to file report regarding tax deferred savings accounts.	\$50 for each failure.
			Exceptions - Reasonable cause.	

Franchise Tax Board
Penalty Reference Chart

Penalty Name	R&TC Section	IRC Section	Penalty Reason	Computation
Failure to File Report Regarding Tax Deferred Savings Accounts - Overstatement as to Amount Designated Nondeductible Contributions	19184(b)(1)(B)	6693	Overstating the amount designated as nondeductible contributions for any taxable year.	\$100 for each overstatement.
			Exceptions - Reasonable cause.	
Failure to File Report Regarding Tax Deferred Savings Accounts - Failure to File a Form Required for Nondeductible Contributions to Individual Retirement Accounts (IRA)	19184(b)(2)	6693	Failure to file a form required for nondeductible contributions to IRAs.	\$50 for each failure.
			Exceptions - Reasonable cause.	
Substantial and Gross Valuation Misstatements on Appraisal	19185	6695A	Knowingly preparing an appraisal to be used in connection with a return or claim and the claimed value results in a substantial valuation misstatement, or gross valuation misstatement.	For returns or submissions filed on or after January 1, 2011: 125% of gross income from the preparation of the appraisal. Or, if less: 10% of the amount of underpayment attributable to misstatement, but not less than \$1,000.
			Exceptions - Established value in the appraisal was more likely than not the proper value.	
Fraudulent Identification of Exempt Use Property	19186	6720B	Knowingly misidentifying applicable property (charitable deduction property) as having exempt use.	\$10,000.
			Exceptions - None.	

Franchise Tax Board
Penalty Reference Chart

Penalty Name	R&TC Section	IRC Section	Penalty Reason	Computation
Financial Institution Record Match (FIRM)	19266(g)	None	Any financial institution that willfully fails to comply with rules and regulations for the administration of delinquent tax collections.	\$50 for each record not provided up to \$100,000 per calendar year.
			Exceptions - Reasonable cause.	
Suspension or Disbarment From Practice Before FTB	19523.5	None	Failure to notify the Franchise Tax Board within 45 days of the issuance of a final order disbaring or suspending the person to practice.	\$5,000.
			Exceptions - None.	
Failure to Provide Information Concerning State Licenses Penalty	19528	None	Licenses failing to provide identification numbers upon demand.	\$100 after 30-day notice and demand.
			Exceptions - None.	
Frivolous Proceedings; Failure to Exhaust Administrative Remedies	19714	6673	Taxpayer's action at the State Board of Equalization (BOE) or in court that was instituted or maintained by the taxpayer for delay, or that the position was frivolous or groundless, or that administrative remedies were not pursued.	Not more than \$5,000.
			Exceptions - None.	
Business Conducted After Suspension or Forfeiture of Corporate Rights	19719	None	Anyone who attempts or purports to exercise the powers, rights, and privileges of a corporation that has been suspended or forfeited.	Minimum \$250 and not exceeding \$1,000.
			Exceptions - Not applicable to any insurer or insurer's counsel.	
Failure to Include Information on Reportable Transactions	19772	6707A	Failure to include reportable transactions information with a return.	\$15,000, \$30,000 if listed transaction.
			Exceptions - Chief Counsel relief only for reportable transactions other than listed transactions.	

Franchise Tax Board
Penalty Reference Chart

Penalty Name	R&TC Section	IRC Section	Penalty Reason	Computation
Noneconomic Substance Transaction Understatement	19774	6662(b)(6) and (i)	Understatement of a noneconomic substance transaction.	40% of understatement. Reduced to 20% if relevant facts adequately disclosed in the return.
			Exceptions - Chief Counsel relief.	
Interest-Based Penalty for Listed Transactions, et al.	19777	None	Taxpayer contacted by FTB concerning an abusive tax avoidance transaction.	100% of the interest payable for the period beginning on the due date of the return and ending on the date the NPA is mailed.
			Exceptions - None.	
Amnesty Program Interest Penalties	19777.5	None	An addition to tax for each tax year that was eligible for amnesty, but amnesty was not requested, and there was an unpaid amount due on March 31, 2005, (i.e., 50% Interest-Based penalty). The penalty is also imposed where FTB mails a notice of proposed assessment or a notice of tax due or where a taxpayer self assesses additional tax for an amnesty eligible tax year after the end of the amnesty period (i.e., Post-Amnesty Penalty).	The 50% Interest-Based Penalty is calculated as an amount equal to fifty percent of the interest that accrued on the unpaid daily balance from the original due date of the tax to March 31, 2005. The Post-Amnesty Penalty is calculated as an amount equal to fifty percent of the interest computed on the additional amount from the original due date of the tax year to March 31, 2005.
			Exceptions - No claim for refund allowed except on the grounds that the penalty was not properly calculated.	
150% Interest Penalty	19778	None	Amended return filed after April 15, 2004, but before taxpayer is contacted by FTB regarding a potentially abusive tax shelter.	Interest accrues at a rate of 150% of the adjusted annual rate.
			Exceptions - None.	
Relief From Contract Voidability	23305.1	None	The period for which relief from voidability of the contract is granted.	\$100 daily for each day of the period for which relief from voidability is granted, not to exceed a total penalty equal to the amount of the tax for the period for which relief is requested.
			Exceptions - None.	
Failure of Exempt Organizations and Trusts to Pay Filing Fee	23772(a)(3)	6033, 6072(e)	Failure to pay fee on or before due date (determined with regard to any extension of time for filing) for filing exempt organization or trust return.	Filing fee increased to \$25.
			Exceptions - Reasonable cause.	

Franchise Tax Board
Penalty Reference Chart

Penalty Name	R&TC Section	IRC Section	Penalty Reason	Computation
Failure of Exempt Organizations and Trusts to File Annual Information Return	23772(c)(1)	6033, 6072(e)	The period in which the exempt organization or trust fails to file a return after the due date.	On notice and demand \$5 for each month or fraction thereof during which the failure to file a return continues, but the total amount imposed on any organization for the failure to file shall not exceed \$40.
			Exceptions - Reasonable cause.	
Failure of Private Foundation to File on Demand	23772(c)(2)	6033, 6072(e)	The period in which a private foundation fails to file a return after receiving a demand for a return from FTB.	\$5 for each month or fraction thereof during which the failure to file a return continues, but the total amount imposed on any organization for the failure to file shall not exceed \$25 in addition to penalty provided in 23772(c)(1).
			Exceptions - Reasonable cause.	
Real Estate Investment Trust (REIT) Failure to Comply With Ascertainment of Ownership Rules	24872.7	857(f)	Failure to comply with federal regulations to ascertain ownership rules.	Penalty imposed only, and in same amount, if penalty is imposed for federal purposes: \$25,000. Intentional disregard is \$50,000. Failure to comply after notice an additional penalty of either \$25,000 or \$50,000.
			Exceptions – Reasonable cause and not willful neglect, as determined by the IRS.	
Failure to Supply Information Penalty	25112	None	Taxpayer engaged in a unitary business that fails to supply requested information.	\$1,000 for each taxable year. Additional penalty of \$1,000 for each 30-day period up to \$24,000 if failure continues for more than 90 days after we notify the taxpayer.
			Exceptions - Reasonable cause.	

EXHIBIT

D

| Taxpayers'
Bill of Rights
Annual Report
to the
Legislature

State of California
Franchise Tax Board

We also compiled statistics for e-filing and payments. For these figures, see Appendix 1, Table 6. e-filing continues to increase, with a seven percent increase from July 1, 2011, to June 30, 2012. As of June 30, 2012, we received 648,000 e-filed Business Entity (BE) tax returns, a 30 percent increase.

FTB informs taxpayers about their California filing requirements through its website, letters, and contacts with nonfilers. FTB sends first-time nonfilers who met their filing requirements in the previous four years a Request for Tax Return notice. We send repeat nonfilers a *Demand for Tax Return* notice. We send a Notice of Proposed Assessment to nonfilers, who do not file the necessary tax returns after receiving a request or demand notice. See Appendix 1, Tables 7A and 7B, for volumes of notices issued. Our goal is to obtain tax returns from those who have a filing requirement without having to issue a Notice of Proposed Assessment.

Approximately 43 percent of the taxpayers contacted for failure to file a tax return subsequently file their tax returns.

Taxpayer Filing Errors

The California R&TC requires the Taxpayers' Rights Advocate to identify the most common taxpayer errors when they file their tax returns and evaluate how those errors may be avoided or corrected.

We compiled taxpayer error information on approximately 15.9 million current year tax returns processed between July 1, 2011, and June 30, 2012. During this time, FTB made approximately 350,000 adjustments and issued just over 310,000 Return Information Notices (RINs) to taxpayers who filed tax returns with errors that resulted in a change of tax liability. This equates to 1.95 percent of tax returns. The errors are explained in the notices. The number of adjustments is greater than the number of notices because many tax returns contained multiple errors. These numbers do not include counts for adjustments which did not affect the tax liability, such as adjustments to estimate transfers, voluntary contributions, or refund offsets to other tax years or other debts.

Close to 53 percent of all adjustments are made on paper-filed tax returns (20 percent of total current year tax returns filed), while only 47 percent of all adjustments are made on electronically filed tax returns (80 percent of total current year tax returns filed).

The most common taxpayer error, for all filing methods, was to claim the wrong amount of estimated tax credits. Of all current year RINs, 42.3 percent contain an Estimate Payment Credit adjustment. Taxpayers either neglected to claim estimate payments they submitted, claimed a credit for a payment that differs from what they submitted, forgot estimate transfers, forgot adjustments to estimate transfers from the previous year, or claimed credits for payments that FTB had no record of receiving.

Tables in Appendix 2 display the number of adjustments by tax return type and filing method, and include a definition of what typically caused each adjustment.

EXHIBIT E

1 Neha Garner
2 Tax Counsel III
3 Board of Equalization, Appeals Division
4 450 N Street, MIC:85
5 PO Box 942879
6 Sacramento, CA 95814
7 Tel: (916) 323-3094
8 Fax: (916) 324-2618

6 Attorney for the Appeals Division

7 **BOARD OF EQUALIZATION**
8 **STATE OF CALIFORNIA**

10 In the Matter of the Appeal of:

12 **KAMALDIP S. GHEI**

} **HEARING SUMMARY**
} **PERSONAL INCOME TAX APPEAL**
} Case No. 796875

<u>Year</u>	<u>Claim for Refund</u> <u>Penalty</u>
2011	\$2,509.75

16 Representing the Parties:

17 For Appellant: Tax Appeals Assistance Program (TAAP)¹
18 For Franchise Tax Board: Anne Mazur, Specialist

20 QUESTION: Whether appellant has established reasonable cause for the abatement of the notice and
21 demand (demand) penalty.

23 HEARING SUMMARY

24 Background

25 Appellant did not file a timely return for the 2011 tax year. The Franchise Tax Board
26 (FTB or respondent) obtained information which indicated that appellant received enough income to
27

28 ¹ Appellant filed the appeal letter. Andrew S. Quinn of TAAP filed appellant's reply brief. Kellen Furlin of TAAP filed appellant's supplemental brief.

1 evidence supporting his contentions. (*Appeal of Yvonne M. Goodwin*, 97-SBE-003, Mar. 19, 1997.)

2 Demand penalties may be abated if the taxpayer's failure to provide information or to file
3 a return is due to reasonable cause and not willful neglect. (Rev. & Tax. Code, § 19133.) Without
4 evidence to the contrary, it is presumed that respondent's determinations of penalties are correct.
5 (*Appeal of Robert Scott*, 83-SBE-094, Apr. 5, 1983.) An appellant bears the burden of showing that the
6 imposition of a penalty was improper. (*Appeal of Kerry and Cheryl James, supra.*)

7 To establish reasonable cause for the abatement of a demand penalty, a taxpayer must
8 show that the failure to properly respond "occurred despite the exercise of ordinary business care and
9 prudence, or that cause existed as would prompt an ordinary intelligent and prudent businessman to have
10 so acted under similar circumstances." (*Appeal of Howard G. and Mary Tons*, 79-SBE-027, Jan. 9,
11 1979; see also *Appeal of Elmer R. and Barbara Malakoff, supra.*) Illness and other personal difficulties
12 that prevent a taxpayer from timely responding to a demand notice may constitute reasonable cause
13 under some circumstances. However, a taxpayer must be prevented from timely providing information,
14 and not merely sacrificing the timeliness of one aspect of the taxpayer's affairs to pursue other aspects.
15 (*Appeal of Michael J. and Diane M. Halaburka*, 85-SBE-025, April 9, 1985; *Appeal of William T. and*
16 *Joy P. Orr*, 68-SBE-10, Feb. 5, 1968.) In addition, this Board has held that a taxpayer's belief that no
17 penalties will apply because no tax was due does not constitute reasonable cause for the failure to
18 respond timely to a notice and demand letter. (*Appeal of Frank E. and Lilia Z. Hublou, supra.*)

19 Each taxpayer has a personal and non-delegable obligation to file a tax return by the due
20 date, to respond to a notice and demand from the FTB that a return be filed, and to furnish information
21 requested by the FTB. (*Appeal of Thomas K. and Gail G. Boehme*, 85-SBE-134, Nov. 6, 1985; *Appeal*
22 *of Roger D. and Mary Miller*, 86-SBE-057, Mar. 4, 1986.) A taxpayer's reliance on an agent, such as an
23 accountant, to file a return by the due date, to respond on the taxpayer's behalf to a notice and demand
24 letter from the FTB, or to reply to a request of information by the FTB, is not reasonable cause. (*United*
25 *States v. Boyle, supra.*) In *Boyle*, the Supreme Court stated that it is reasonable for a taxpayer to rely on
26 the advice of an accountant or attorney when that accountant or attorney advises a taxpayer as to a
27 matter of tax law. However, the Supreme Court also held that one does not need to be a tax expert to
28 know that tax returns have fixed filing dates and taxes must be paid when due. (*Id.*, at 251-252.) In

1 addition, the Supreme Court held that a taxpayer's reliance on an accountant or attorney cannot be a
2 substitute for compliance with an unambiguous statute. (*Id.*)

3 STAFF COMMENTS

4 According to California Code of Regulations section (Regulation) 19133, respondent
5 may only impose a demand penalty if a taxpayer failed to respond to a current Demand, and respondent
6 has previously issued an NPA after the taxpayer failed to timely respond to a Request or Demand at any
7 time during the four-taxable-year period preceding the taxable year for which the current Demand for
8 Tax Return was issued. (Cal. Code Regs., tit. 18, § 19133, subd. (b).) Respondent also issued a Request
9 or Demand to appellant for the 2007, 2008, and 2009 tax years and, when appellant did not timely
10 respond, NPAs were issued.⁷ Thus, respondent properly imposed the demand penalty as prescribed by
11 that regulation.

12 Respondent issued three demand letters to appellant for the 2011 tax year: (1) a
13 Demand for Tax Return letter dated February 27, 2013, which included a response date of April 3,
14 2013; (2) a Deferral Letter dated March 28, 2013, in which respondent granted appellant's request for
15 additional time to file his 2011 return until May 3, 2013; and (3) a Deferral Letter dated April 23,
16 2013, in which respondent granted appellant's request for additional time to file his 2011 return until
17 June 2, 2013. In the April 23, 2013 Deferral Letter, respondent stated the following:

18 **Demand to File Penalty** - If you do not file the tax return within the time period
19 specified in this letter, we impose a penalty of 25 percent of the total tax amount before
20 applying any payments or credits. Therefore, you may owe penalties and interest even
21 if your tax return shows the tax was paid timely. This penalty is in addition to the 25
22 percent delinquent filing penalty. We impose the penalty from the date of the Notice of
Proposed Assessment. (Revenue and Taxation Code Section 19133[.])

23 The parties should be prepared to discuss whether the circumstances of appellant's lack of response by
24 the June 2, 2013 deferral date provides a basis to find that reasonable cause, not willful neglect, caused
25 the lack of response, as appellant did not file a tax return until August 30, 2013, which was after
26

27 ⁷ With its opening briefing, respondent provided the 2007 Request, dated February 9, 2009; the 2008 Request, dated
28 January 11, 2010; and the 2009 Demand, dated February 2, 2011. Respondent also provided the 2007, 2008, and 2009
NPA's, dated February 22, 2010, March 22, 2010, and April 5, 2011, respectively.

Appeal of Thomas K. and Gail G. Boehme

The issues presented in this appeal are whether appellants were residents of California during the years in issue and whether appellants have shown that respondent's assessment of delinquent filing penalties was incorrect.

Appellant Thomas K. Boehme is a tenured professor of mathematics at the University of California, Santa Barbara. On January 4, 1977, Professor Boehme was selected to be director of the University of California Study Center in Cairo, **Egypt**, for the period July 1, 1977, through June 30, 1979.

Appellants left California with their two children for Egypt in September of 1977. They rented out their home on a month-to-month basis. The rentals were handled by Sabaco Realty in Santa Barbara. The Boehmes also owned two triplexes in Lompoc, which were rented out unfurnished by Sabaco Realty. Sabaco Realty reported to Mr. **Boehme's** father-in-law, who lives in Guthrie, Oklahoma.

Upon leaving California, Professor Boehme resigned from his faculty club and the Los Carneros Swim Club. Appellants joined the Maadi Sporting and Yacht Club when they **arived** in Cairo.

The Boehmes did not return to California until July of 1979, when Mr. Boehme resumed his duties at the University of California, Santa Barbara. They once again moved into their home.

Respondent concluded that appellants remained California residents during their 22-month absence because of the following facts:

1. the Boehmes maintained savings and checking accounts in California;
2. appellants held valid California driver's licenses;
3. the family car was registered and left in California;
4. the Boehmes retained their California charge accounts;

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5. appellants hired a California accountant;
6. the Boehmes claimed the California homeowner's exemption on their **California** home;.
7. and appellants retained ownership of their real property in California, leasing it on a month-to-month basis.

Appellants contend that they were not residents of California **during** their stay in Egypt because they did not return to California during the **22-month** period. They did not vote in California or use their California charge accounts. Appellants further contend that while in Egypt they used local doctors and dentists and did their banking locally in Cairo.'

No tax returns were filed by appellants for the years 1977 and 1978. Mr. Boehme contends that he sent all the necessary information to a California-based accountant, Keith Watkins, who failed to file the proper returns. When appellants returned to California in August of 1979 and allegedly learned of Mr. **Watkin's** failure to file the returns, they prepared the returns and filed them on September 5, 1979. Because the Boehmes are calendar-year taxpayers and because no extension of time for filing their returns was requested, respondent imposed delinquent filing **penalties** for the years 1977 and 1978.

Appellants contend that they made reasonable efforts to ensure that their returns were filed. They state that they arranged with Mr. Watkins to have him file their returns and that they sent him the information **necessary to** prepare the returns. They further contend that because they believed they owed no tax, they assumed Mr. Watkins had no need to contact them.

Respondent issued notices of assessment reflecting its position that the Boehmes were California residents during 1977 and 1978 and that the **pnalties** were proper. Appellants appealed the proposed assessments in a timely manner.

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Section 17041 imposes a tax on the entire taxable income of every resident of **this** state. Subdivision (a) of section 17014 provides that the term "resident" includes "[e]very individual domiciled in this state who is outside the state for a temporary or transitory purpose." Respondent contends that appellants were domiciled in California, and that their journey to Egypt was for a **temporary** or transitory purpose.

Both parties agree that the Boehmes were domiciled in California during the years in issue. Therefore, the sole issue presented is whether the Boehmes were residents of California. For the reasons expressed below, we have concluded that appellants continued to be California residents during their absence from this state as their absence was for a temporary or transitory purpose. In the Appeal of David J. and Amanda Broadhurst, decided by this board on April 5, 1976, we summarized the regulations and case law interpreting the phrase "temporary or transitory purpose" as follows:

Respondent's regulations indicate that whether a taxpayer's purposes in entering or leaving California are temporary or transitory in character is essentially a question of fact, to be determined by examining all the circumstances of each particular case. [Citations.] The regulations also provide that the underlying theory of California's definition of "**resident**" is that the state where a person has his closest connections is the state of his residence. [Citations.] The purpose of this definition is to define the class of individuals who should contribute to the support of the state because they receive substantial benefits and protection from its laws and government. [Citations.] Consistently with these regulations, we have held that the connections which a taxpayer maintains in this and other states are an important indication of whether his presence in or absence from California is temporary or transitory in character. [Citations.] Some of the contacts we have considered relevant are the maintenance of a family home, bank accounts, or business interests: voting registration and the possession of a local driver's license; and ownership of real property. [Citations.] Such connections are important both as a measure of the benefits and protection which

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the taxpayer has received from the laws and government of California, and also as an objective indication of whether the taxpayer entered or left this state for temporary or transitory purposes. [Citation.]

In this case, Mr. Boehme was employed under a contract that was to begin on July 1, 1977, and to end on June 30, 1979. Appellants did not, however, leave California until September of 1977. They, therefore, knew before leaving California that they would be absent only about 22 months. With this knowledge, appellants chose to rent their home out on a month-to-month basis rather than enter into a long-term lease. They continued to claim the homeowner's exemption for their California home (see Appeal of Joe and Gloria Morgan, Cal. St. Bd. of Equal., July 30, 1985), which indicates that this home was their principal residence, and they retained savings accounts, checking accounts, driver's licenses, charge accounts, and a membership in a professional organization. Quite clearly, the burden of proof is on appellants to show that respondent's determination of tax, which is presumed to be correct, is, in fact, erroneous. (Todd v. McColgan, 89 Cal.App.2d 509 [201 P.2d 414] (1949).) Given the above facts, we must conclude that appellants have not met this burden. **The Boehmes neither substantially severed their connections with California nor were gone long enough so as to cause us to conclude that their absence from California was anything other than a temporary or transitory absence. Consequently, appellants continued to be California residents during the period in issue.**

The final issue is whether the delinquent filing penalties were appropriate.

Appellants have stated that before leaving for **Egypt**, they arranged with an accountant, Keith Watkins, to handle their tax obligations. In May of 1978, Professor Boehme wrote to Mr. Watkins and provided information needed to file the 1977 return. Professor Boehme at the same time wrote to his insurance agent and requested that he send some additional information to Mr. Watkins. Appellants contend that they reasonably acted to ensure that the 1977 return would be filed.

Respondent imposed the delinquent filing penalty because appellants' 1977 return was not filed until September of 1979. It asserts that when appellants attempted to contact Mr. Watkins and were unable to

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obtain a response, they should have contacted the Franchise Tax Board.

Section 18681 provides:

(a) If any taxpayer fails to make and file a return required by this part on or before the due date of the return or the due date as extended by Franchise Tax Board, then, unless it is shown that the failure is due to reasonable cause and not due to willful neglect, 5 percent of the tax shall be added to the tax for each month or fraction thereof elapsing between the due date of the return and the date on which filed, ...

The phrase "reasonable cause" as used in this section means such cause as would prompt an ordinarily intelligent and prudent businessman to have so acted under similar circumstances. (Appeal of Joseph W. and Elsie M. Cummings, Cal. St. Bd. of Equal., Dec. 13, 1960.)

The United States Supreme Court, in the case of United States v. Boyle, 469 U.S. -- [83 L.Ed.2d 622] (1985), held that the failure to make a timely filing of a tax return is not excused by a taxpayer's reliance on an agent. In so holding, the Boyle court stated that while it may be "reasonable" for a taxpayer to assume that an agent would comply with the statutes and so resolve the matter between them, it does not resolve the matter of the taxpayer's obligations under the statutes. In other words, the burden of prompt filing is a fixed and clear duty on the taxpayer, not on some agent or employee of the taxpayer. Because the government has millions of taxpayers to monitor, the system of self-assessment in the initial calculation of a tax cannot work unless there are strict filing standards. Any less rigid standard would risk encouraging a lax attitude toward filing dates. Prompt payment of tax is imperative to the government, which should not have to assume the burden of unnecessary ad hoc determinations. (United States v. Boyle, supra, 469 U.S. at -- [83 L.Ed.2d at 630] (1985).)

In this case, appellants relied on their agent, Mr. Watkins, to file their returns for 1977 and 1978. Because this reliance is not considered to be "reasonable cause" for failing to file a timely return, the action of respondent must be upheld.

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We conclude, therefore, that appellants were residents of California for the period July 1, 1977, through June 30, 1979, and that their failure to file timely returns for 1977 and 1978 was not due to reasonable cause.

Appeal of Roger D. and Mary Miller

The issues are (1) whether appellants demonstrated error in respondent's partial disallowance of their claimed theft loss and (2) whether respondent properly imposed a penalty for failure to file a timely return.

Appellants are entertainers. They do not purport to have any knowledge of the filing responsibilities with respect to state income taxes. They relied upon a certified public accounting firm to handle their income tax filing responsibilities. They understood that their federal and state personal income tax returns for 1978 would be filed under requests for extensions of time to file. No request for an extension of time to file the California personal income tax return for 1978 was filed with respondent. On October 15, 1979, six months late, appellants filed their original California return for 1978; it had been prepared by the accounting firm. On January 4, 1980, appellants filed an amended California return for 1978: it had been prepared by a management company, which replaced the accounting firm as appellants' tax consultant and business manager. The amended return was filed to report a purported \$62,786 loss from a jewelry theft which took place while they were on a business engagement in Reno, Nevada. During a subsequent audit, respondent disallowed \$34,989 of the loss on the ground that the cost of the stolen jewelry had not been substantiated and assessed the 25 percent late filing penalty specified by section 18681. Appellants protested. Respondent affirmed its assessment. This appeal followed.

It is well settled that tax deductions are a matter of legislative grace and that the taxpayers bear the burden of proof that they are entitled to a particular deduction claimed. (New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78 L.Ed. 1348] (1934); Appeal of Joseph A. and Marion Fields, Cal. St. Bd. of Equal., May 2, 1961.) California Revenue and Taxation Code section 17206 is substantially similar to section 165 of the Internal Revenue Code, so federal case law and regulations are persuasive as to the proper interpretation of that California statute. (Holmes v. McColgan, 17 Cal.2d 426 [110 P.2d 428] (1941); Meanley v. McColgan, 49 Cal.App.2d 203 [121 P.2d 45] (1942).)

Treasury Regulation section 1.165-7(b)(1) provides that the amount of a theft loss which may be taken is the lesser of either an amount equal to the fair market value of the property immediately prior to its theft of an amount equal to the adjusted basis of the

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property. Generally, the adjusted basis of that property would be its cost. (See Rev. & Tax. Code, § 18042.)

Respondent has explained that appellants supplied invoices, receipts, and canceled checks totaling **\$6,867.18**. Not all the receipts and canceled checks identified that they were for jewelry. Also, appellants supplied an appraisal of \$33,000 for two pieces of jewelry. The appraisal was dated February 10, 1978, but did not identify the date the items had been purchased or their original cost. Respondent's position is that appellants have substantiated less than 10 percent of the actual cost (adjusted basis) of the items they reported as stolen and have not shown that the appraised value of the two items was their fair market value-immediately prior to the theft and was also less than the original cost of those items (adjusted basis).- Respondent argues that jewelry generally appreciates with time, so that its original cost would generally be the lesser (deductible) value rather than its fair market value immediately before a theft. Notwithstanding the minimal substantiation submitted by appellants, respondent **allowed \$27,797** (45 percent) of the claimed loss.

Appellants' position is that they cannot reasonably be expected to secure purchase receipts for every item they buy, or to secure purchase receipts from donors of every item they have been given, or to maintain those receipts indefinitely for the purpose of substantiating a possible future theft loss.

Appellants cite Wallach v. Commissioner, ¶ 51,129 T.C.M. (F-H) (1951), as authority for the proposition that fair market value prior to the loss may be used to determine the deduction if that value is not demonstrably in excess of the stolen property's cost, and cite Jenny v. Commissioner, ¶ 77,142 T.C.M. (P-H) (1977), for the proposition that the fair market value was accepted when the taxpayer's estimate was higher due to replacement value. Actually, the court in Wallach found that, as a matter of fact, the amount of a jewelry appraisal, made shortly before the jewelry was stolen, was not in excess of the cost or adjusted basis of the jewelry and so could be used to determine the loss for tax purposes. There is no evidence in this appeal which would allow us to reach a similar conclusion. In Jenny, after noting the applicable rule that the proper measure of the theft loss was the lesser of (1) the fair market value of the property immediately before the theft or (2) the adjusted basis of the property, the court found that

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the total value of the stolen property was a specific amount. That amount was far less than the total amount of the taxpayer's estimates of the property's fair market value. We do not find this case helpful to appellants' situation.

With respect to appellants' burden of proof, we conclude that they cannot sustain their burden of demonstrating error in the amount of respondent's assessment by arguing that the production of documentary proof of the cost or basis of the stolen items is unreasonable. Such an argument does not make the slightest demonstration that the assessment is in error. Accordingly, we conclude that respondent's assessment must be upheld.

Next, we must consider whether the penalty for failure to file a timely return was properly assessed. As we noted above, appellants relied on their accountant to file their return which was filed six months late. Section 18681 provides in relevant part:

(a) If any taxpayer fails to make and file a return required by this. **part on or** 'before the due date of the return or the due date as extended by the Franchise Tax Board, then, unless it is shown that the failure is due to reasonable cause and not due to willful neglect, 5 percent of the tax shall be added to the tax for each month or fraction thereof elapsing between the due date of the return and the date on which filed, but the total penalty shall not exceed 25 percent of the tax.

The United States Supreme Court has held that a taxpayer's reliance on professional assistance to prepare and file a timely tax return does not constitute "reasonable cause" under the statute. (United States v. Boyle, 469 U.S. -- [83 L.Ed.2d 622] (1985).) Under the circumstances, we must conclude that respondent's assessment of a late filing penalty was correct and must be upheld.

EXHIBIT F

Lavu Financial Services

March 24th, 2015

To Whom It May Concern:

As stated in my previous declaration dated August 1, 2014, I, Hemant Lavu, acted in my capacity as CPA for Kamaldip Ghei in preparing his 2011 tax return. To clear up the inconsistencies that the Franchise Tax Board points to in their briefing, I did have a complete and accurate picture of Mr. Ghei's *income* items. The documents Mr. Ghei was still gathering were evidence of additional business expense deductions, which would only increase his expected refund. Regardless, I had received all necessary documentation from Mr. Ghei in early May 2013.

Around the same time, Mr. Ghei informed me of the Notice and Demand Letter he received from the FTB, and the latest deferral date of June 2, 2013. I told him I would take care of any further deferrals that were necessary. I also told him that we could file his return late because he was owed a refund. I chose not to ask for any further deferrals because I prepared his tax return as completely as I could with the information that I had at the time. I was confident that he was due a sizable refund and he met all of his tax obligations.

I was confident in my advice to Mr. Ghei because, in my experience, the Franchise Tax Board issues penalties based on the tax liabilities that are owed. In the case of Mr. Ghei, he did not owe any further taxes for this calendar year. In fact, we presumed that the FTB would issue a full refund, plus additional interest because they, in essence, had a loan from Mr. Ghei of his outstanding tax withholding amount. In my previous experience, this letter was merely used as a "scare tactic" in order to foster compliance from the taxpayer.

As his tax preparer, upon learning of the Notice and Demand letter, it was my responsibility to advise Mr. Ghei on how to proceed. I now realize that my advice to Mr. Ghei was improper. Mr. Ghei acted as any reasonable taxpayer would under the circumstances by relying on my advice regarding the Notice and Demand letter. As such, Mr. Ghei should be granted leniency in this matter and the penalty should be abated.

I, Hemant Lavu, do declare, under penalty of perjury, that the foregoing is true and correct.

Sincerely,



Hemant Lavu, CPA



ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

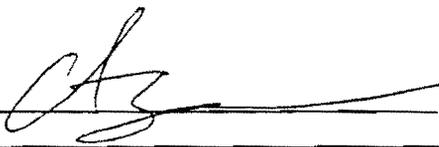
State of California
County of Los Angeles

On 3-24-15 before me, Agustin Rivera-Corado, Notary Public
(insert name and title of the officer)

personally appeared Hemanth Lavu,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in ~~his/her/their~~ authorized capacity(ies), and that by ~~his/her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)

