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2018 – OTA – 049P

OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	)	OTA Case No. 18011211
	)	
MATTHEW MAZDYASNI AND	)	Date Issued: May 31, 2018
	)	
FERESHTEH MAZDYASNI	)	
	)	

OPINION

Representing the Parties:

For Appellants: Jamie Parks Cody, CPA

For Respondent: Mira Patel, Tax Counsel

KWEE, Administrative Law Judge: Pursuant to Revenue and Taxation Code section 19324,[1] Matthew Myzdyasni (appellant) and Fereshteh Mazdyasni (collectively, appellants) appeal an action by the Franchise Tax Board (FTB or respondent) in denying appellants' claim for refund in the amount of $21,479.60 for the 2012 tax year. This matter is being decided based on the written record because appellants waived their right to an oral hearing.

ISSUE

Did appellants establish a basis for abatement of the $21,479.60 estimated tax penalty?

FACTUAL FINDINGS

1. On October 15, 2013, appellants timely filed a joint California Resident Income Tax Return for the 2012 tax year. On the tax return, appellants reported California AGI of $58,531,222, and total tax of $7,726,375. The total tax consisted of $7,172,132 in income tax and $575,197 in mental health services tax, less nonrefundable enterprise zone income tax credits of $20,954.

[1] Unless otherwise indicated, all statutory references are to sections of the California Revenue and Taxation Code.

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2. Appellants claimed income tax withholdings of $1,168,334, and $6,955,545 in other payments on their tax return. Those other payments included: $120,000 estimated tax payment on April 15, 2012; $180,000 estimated tax payment on June 14, 2012; $1,000,000 estimated tax payment on December 31, 2012; and payments totaling $5,655,545 on April 15, 2013. The total payments exceed the total tax by $397,504. Appellants applied all of the overpayment towards their 2013 tax liability.
3. As relevant to this appeal, appellants' primary source of income in 2012 consisted of capital gains from the sale of appellant's interest in a partnership. Appellants reported this transaction on their tax return's Schedule D (540), California Capital Gain or Loss Adjustment, as follows: Healthcare Partner-Partnership Units sold for $53,120,620, with a basis of $9,243,137, and resulting in gain of $43,877,483. Appellants reported the partnership interest as acquired on January 1, 2002, and disposed of on December 31, 2012. In addition, appellants separately reported $1,782,629 as appellant's distributive share of income from the partnership.
4. Appellants left the line to report an underpayment of the estimated tax penalty (estimated tax penalty) blank on their tax return.
5. On October 24, 2013, FTB issued a "Return Information Notice," advising appellants that FTB revised appellants' balance to add an estimated tax penalty.
6. Subsequently, appellants submitted FTB Form 5805, which is used to calculate the estimated tax penalty, reporting a penalty due in the amount of $21,153, based on allocating all or substantially all of the income from the sale of the partnership to the final estimated payment due for 2012. Appellants later submitted a revised Form 5805, increasing the penalty amount to $22,141, based on allocating a slightly higher amount of income to the final estimated payment due for 2012.
7. FTB revised the penalty amount to $21,479.60, and proceeded with collection efforts.[2]
8. Appellants subsequently paid the $21,479.60 estimated tax penalty on March 12, 2014.
9. On December 7, 2015, appellants requested abatement of the estimated tax penalty on the basis that: through withholdings and estimated tax payments for tax year 2012, appellants paid 110 percent of their prior year's tax liability; the "transaction that caused the large

[2] The collection efforts resulted in the assessment of a $170 collection cost recovery fee, $246.79 in interest, and a $16 collection lien fee. These amounts are not at issue in this appeal.

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tax liability did not occur until the end of December 2012"; this was a one-time occurrence; and appellants have a good filing history.

10. On September 29, 2016, FTB issued a Notice of Action (NOA) denying appellants' claim for refund and request for penalty abatement on the basis that appellants failed to show reasonable cause for abating the penalty.

11. On December 28, 2016, appellants timely filed the instant appeal, contending that: appellant only held a 1.1312 percent interest in the partnership and had little leverage to obtain the information necessary to estimate the tax liability; the partnership was sold in December 2012; the tax implications of the sale were extremely complicated; and the information necessary to estimate the taxes was not available when the estimated tax payment was due. In support, appellants submitted a copy of the Schedule K-1 issued by the partnership, bearing a date of December 18, 2012.

12. The Schedule K-1 issued by Healthcare Partners Holdings LLC to appellant states that it is a final Schedule K-1. As a final Schedule K-1, it covers the tax reporting period January 1, 2012, though October 31, 2012. The Schedule K-1 also reports that appellant's percentage interest in partnership capital, profit sharing, and loss sharing was 1.1312 percent "before decrease or termination," and 0 percent as of October 31, 2012. Therefore, we find that appellant sold all of his 1.1312 percent interest in the partnership on or before October 31, 2012.

13. In their reply brief, appellants further contended that the CPA who prepared their tax return advised appellants that she would be able to get a waiver of any estimated tax penalty assessed based on appellants' good filing history.

DISCUSSION

California conforms to Internal Revenue Code (IRC) section 6654, and imposes an estimated tax penalty for the failure to timely make estimated income tax payments. (§ 19136(a); IRC, § 6654.) The estimated tax penalty is similar to an interest charge, and applies from the due date of the estimated tax payment until the date it is paid. (IRC, § 6654(b)(2).) Estimated tax payments are generally required of persons who owe more than $500 in tax, after applying income tax withholdings and credits. (§ 19136(c)(2).) Estimated tax payments are due four times a year, in the amount of 25 percent of the required annual payment, on: April 15, June 15, September 15, and the final payment due January 15 of the following tax year. (IRC,

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§ 6654(c).) Section 19136.3 provides that in the case of an individual reporting adjusted gross income (AGI) in excess of $1 million, the required annual payment is 90 percent of the tax shown on the return for the taxable year.[3] (§ 19136.3(a); IRC, § 6654(d)(2)(B).) An individual with uneven income during the year may use an annualized income installment method in lieu of making four equal payments. (§ 19136.1(b)(1); IRC, § 6654(d).)

There is no general reasonable cause exception to the estimated tax penalty.[4] Relief from the estimated tax penalty is not available upon a mere showing of reasonable cause or a lack of willful neglect; thus, extenuating circumstances are irrelevant. (*Farhoumand v. Commissioner* (2012) T.C. Memo. 2012-131; *Estate of Ruben v. Commissioner* (1960) 33 T.C. 1071, 1072; *Appeal of Weaver Equipment Company*, 80-SBE-048, May 21, 1980;[5] see also, e.g., Internal Revenue Manual (IRM) 20.1.3.1.6.1 (12-10-2013).) Instead, the law allows for abatement of the estimated tax penalty if, by reason of casualty, disaster, or other unusual circumstances, imposition of the penalty would be against equity and good conscience. (IRC, § 6654(e)(3)(A).) The exception for unusual circumstances is considerably narrower than reasonable cause. (Internal Revenue Service (IRS) Field Service Advisory (Jun. 2, 1994) 1994 WL 1725487 (FSA).)

The legislative history of IRC section 6654(e)(3)(A) provides some guidance on congressional intent with respect to the sort of circumstances warranting waiver of the penalty. The legislative history indicates that waiver may be appropriate where: the taxpayer's books and records were destroyed by fire or other casualty; an estimated tax payment was not made due to the death or serious illness of the taxpayer; imposition of the penalty would be inequitable

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[3] As relevant, California does not fully conform to the federal safe harbor in IRC section 6654(d)(1)(B)(ii), for taxpayers making a required annual payment of 110 percent of the tax shown on the return for the prior year. Section 19136.3 provides that for tax years beginning on or after January 1, 2009, the federal safe harbor in IRC section 6654(d)(1)(B)(ii) does not apply to individuals reporting California AGI in excess of $1 million. The California AGI threshold is $500,000 in the case of a married individual filing a separate return. (§ 19136.3(a).) Appellants reported California AGI of $58,531,222; thus, the safe harbor does not apply to them.

[4] Nevertheless, the estimated tax penalty will not apply if it is established that either: the failure to timely pay the estimated tax payment was due to reasonable cause, *and* the taxpayer retired after reaching age 62; or the taxpayer became disabled in the taxable year for which the estimated payments were required to be made or in the previous year. (IRC, § 6654(e)(3)(B).) Appellants have not alleged disability or that they are over age 62; therefore, we do not discuss this further.

[5] Pursuant California Code of Regulations, title 18, section 30501(d)(3), precedential opinions of the State Board of Equalization (BOE) that were adopted prior to January 1, 2018, may be cited as precedential authority to the Office of Tax Appeals unless a panel removes, in whole or in part, the precedential status of the opinion. BOE's precedential opinions are viewable on BOE's website: http://www.boe.ca.gov/legal/legalopcont.htm.

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because, for example, the taxpayer substantially overstated their tax liability on their return or because the taxpayer designated that an overpayment of tax for the prior year be credited against their estimated tax, but the overpayment is offset for either past-due child support or non-tax federal debt under IRC section 6402 subdivision (c) or (d), and the taxpayer was not notified of the offset until after the due date for the estimated tax payment. (FSA, *supra*, 1994 WL 1725487; H.R. Conf. Rep. No. 861, 98th Cong., 2d Sess., 1115-1116 (1984); S. Rep. No. 169 (Vol 1) 98th Cong., 2d Sess. 506-507 (1984).) Thus, for example, the IRS has waived the estimated tax penalty in situations where a tax law change, disaster, required accounting method change, or a Government action or inaction, caused extreme difficulty in estimating the tax. (*Ibid.*) On the other hand, stock market volatility is not an unusual circumstance. (*Farhoumand v. Commissioner*, *supra*.) With respect to a partner's distributive share of income, which is reported on a Schedule K-1, the IRM explains that "income derived from pass-through entities … is not excludible from the estimated tax requirements merely because such income is not known until [a] Schedule K-1 is received after the close of the taxable year." (IRM 20.1.3.1.6.5 (12-20-2013).)

Appellants' contentions that their interest in the partnership was not sold until December, and that they did not timely obtain the necessary information from the partnership, are contradicted by the evidence. Specifically, appellants' own exhibit, the partnership's final Schedule K-1, is dated December 18, 2012, and covers the period January 1, 2012, through October 31, 2012, which is a short period. This is significant because it shows that appellants had no reportable interest in the partnership after October 31, 2012. Further, the Schedule K-1 reported that appellant's interest in ownership of partnership capital, profit sharing, and loss sharing was 1.1312 percent prior to the decrease or termination, and 0 percent as of October 31, 2012, which indicates that appellant sold his interest in the partnership on or before October 31, 2012. Appellants have not established why appellants would not have reason or ability to know how much appellant sold his interest in the partnership for by either the date of sale of his interest in the partnership or by the close of the tax year. To the contrary, the evidence suggests that appellants had sufficient notice of the transaction to know of the large tax liability, and sufficient time to calculate and pay with reasonable accuracy the final estimated tax payment for

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2012, which was due on January 15, 2013.[6] Therefore, the imposition of the estimated tax penalty is not against equity and good conscience in the instant case.

Nevertheless, we will address appellants' contention that an alleged inability to timely obtain information necessary to calculate the tax liability from a partnership is an unusual circumstance warranting abatement of the penalty. We find that it is not. It takes no special skill set or talent to know that there are unambiguous due dates for filing returns and paying taxes, and to comply with those requirements one must timely obtain and maintain the requisite records such as, in the case of a partnership, a Schedule K-1. Thus, for example, it is a well-established rule in California that delay due to difficulty in accumulating documents or other information necessary to complete a return generally will not constitute reasonable cause for purposes of abating a late payment penalty.[7] If the Legislature or the Congress wanted to create an exception to allow waiver of the penalty due to reasonable cause or inability to timely obtain documents from a partnership, it would be easy to do; nevertheless, the statutes are specifically written so as to preclude relief based entirely on reasonable cause. Thus, we find that difficulty in estimating the tax is not an unusual circumstance for purposes of penalty abatement within the meaning of IRC section 6654(e).[8]

Appellants also cite *U.S. v. Boyle* (1985) 469 U.S. 241, to support their contention that appellants reasonably relied on advice from their tax professional, a CPA, who advised them that, if an estimated tax penalty were assessed, she would be able to have it abated based on appellants' good filing history. In *Boyle*, involving a late-filing penalty, the United States Supreme Court concluded that each taxpayer has a personal, non-delegable obligation to file a tax return by the due date and, as such, a taxpayer's reliance on a third party to timely file a federal return does not constitute reasonable cause for a late filing. (*United States v. Boyle,*

[6] Respondent concedes that it miscalculated the estimated tax penalty in appellants' favor, and states that it does not intend to issue an additional NPA. Thus, we make no finding with respect to whether or not all or substantially all of appellants' income from the sale of the partnership interest was properly allocated to the final estimated tax payment due for 2012.

[7] See *Appeal of J. B. and P. R. Campbell,* 85-SBE-112, Oct. 9, 1985 [delay in obtaining records]; *Appeal of Elixir Industries*, 83-SBE-248, Dec. 14, 1983 [late discovery of additional income]; *Appeal of M.B. and G.M. Scott,* 82-SBE-249, Oct. 14, 1982 [lack of necessary information]; *Appeal of Incom International, Inc.*, 82-SBE-053, Mar. 31, 1982 [difficulty accumulating necessary information]; *Appeal of Avco Financial Services, Inc.*, 79-SBE-084, May 9, 1979 [difficulty estimating tax due resulting in late payment penalty].

[8] We note that even a limited partner generally has the right to inspect and copy information regarding the financial condition of the partnership. (See Corp. Code, § 15903.04.)

supra, 469 U.S. 241, 252.) On the other hand, a taxpayer may reasonably rely on an accountant or attorney for substantive advice on a matter of tax law, such as whether a liability exists. (*Id.* at p. 251.)

As a preliminary matter, the reasonable cause standard at issue in *Boyle* is not the applicable standard for relief of the estimated tax penalty. Further, here it was undisputed that appellants had a tax liability, and the advice upon which appellants relied was whether the accountant would be able to convince the tax agency to waive the penalty if appellants underpaid the required annual payment. Thus, by the very nature of appellants' contention, appellants had actual knowledge that a penalty could be assessed if they failed to make the required annual payment. Abatement of a penalty is not a matter that should be taken for granted. Despite knowing that a penalty could be assessed on an underpayment, it does not appear that appellants even attempted to make a reasonably accurate estimated tax payment. Appellants underpaid the required estimated tax amount by $2,903,726.60, which represents 60 percent of the required payment. Under the circumstances, we do not find that it would be against equity and good conscience to impose the penalty.

In conclusion, we find that appellants did not establish that an unusual circumstance exists that would cause imposition of the penalty to be against equity and good conscience.

HOLDING

Appellants failed to establish a basis for abatement of the $21,479.60 estimated tax penalty.

DISPOSITION

Respondent's action is sustained.

Andrew J. Kwee
Administrative Law Judge

We concur:

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Jeffrey G. Angeja
Administrative Law Judge

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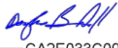

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Douglas Bramhall
Administrative Law Judge