

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No. 18042699
SHAUN M. STEWART AND SUSAN)	Date Issued: February 27, 2019
STEWART)	
)	
)	

OPINION

Representing the Parties:

For Appellant: Dave Bowman, CPA

For Respondent: Joel M. Smith, Tax Counsel

N. DANG, Administrative Law Judge: Pursuant to Revenue and Taxation Code section 19324,¹ Shaun M. Stewart and Susan Stewart (appellants) appeal an action by the Franchise Tax Board (FTB) denying their claim for refund of \$998.93 for the 2015 tax year.

Appellants waived their right to an oral hearing, and therefore, the matter is being decided based on the written record.

ISSUE

Whether appellants have established that waiver of the section 19136 (underpayment of estimated tax) penalty is warranted due to unusual circumstances, such that imposition of this penalty would be against equity and good conscience.

FACTUAL FINDINGS

1. Appellants used the annualized income installment method to compute their required estimated tax installments for 2015.
2. Appellants underpaid their final estimated tax installment for 2015 by \$133,923.
3. Subsequently, by notice dated December 12, 2016, FTB imposed a \$998.93 underpayment of estimated tax penalty upon appellants for the 2015 tax year.

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

4. Appellants paid the liability shown on the December 12, 2016 notice and filed a timely claim for refund requesting that the underpayment of estimated tax penalty be waived.
5. In response, FTB issued a Notice of Action denying appellant's claim for refund. This timely appeal followed.

DISCUSSION

Appellants do not dispute the imposition or calculation of the penalty at issue, but rather, they assert that waiver of the underpayment of estimated tax penalty is warranted due to “unusual circumstance,” as specified below in Internal Revenue Code (IRC) section 6654(e)(3)(A). Specifically, appellants contend that they sold their business sometime in October 2015, resulting in a “once in a lifetime” capital gain which caused their California adjusted gross income (AGI) to exceed \$1,000,000 for the year at issue. Appellants assert that they were unaware that the safe harbor provision of IRC section 6654(d)(1)(B)(ii) was therefore inapplicable to them, and this caused appellants to miscalculate their final estimated tax installment amount.² Appellants further urge us to consider their longstanding record of compliance, and the fact their 2015 tax liability was fully paid by the due date.

As set forth in IRC section 6654(e)(3)(A)–(B), there are only two conditions under which waiver of the underpayment of estimated tax penalty is warranted: (1) where the underpayment was due to casualty, disaster, or other unusual circumstances such that imposition of the penalty would be against equity and good conscience; or (2) reasonable cause, and either the taxpayer retired after having attained age 62, or the taxpayer became disabled in the taxable year for which the estimated tax installments were required to be made or in the previous taxable year. Appellants carry the burden of establishing by a preponderance of the evidence that waiver of the penalty is warranted. (Cal. Code Regs., tit. 18, § 30219(a), (c).) In this case, appellants do not allege the special circumstances relating to retirement or disability, so we address only the first condition noted above.

The statute does not explicitly define “other unusual circumstances.” However, under the rule of *ejusdem generis*, a Latin phrase meaning “of the same kind, class or nature,” general catch-all phrases such as this generally refer only to the same type of preceding objects

² California does not fully conform to the federal safe harbor in IRC section 6654(d)(1)(B)(ii), allowing taxpayers to make a required annual payment of 110 percent of the tax shown on the prior year return. 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.

specifically enumerated by statute. (*Epic Systems Corp. v. Lewis* (2018) 138 S.Ct. 1612, 1625.) This suggests that other unusual circumstances are those events analogous to a casualty or natural disaster.

The legislative history further illustrates what might constitute an unusual circumstance, indicating that waiver of the penalty is warranted where 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(c) or (d), and the taxpayer was not notified of the offset until after the due date for the estimated tax payment. (H.R. Conf. Rep. No. 861, 98th Cong., 2d Sess., 1115-1116 (1984).)

Finally, case law offers some additional guidance on what may (or may not) constitute unusual circumstance. For instance, the U.S. Tax Court has found that stock market volatility does not constitute an unusual circumstance. (*Farhoumand v. Commissioner* (2012) T.C. Memo. 2012-131.) And the U.S. Court of Appeals for the Seventh Circuit has held that while reasonable cause alone does not excuse the penalty, “it would be, at the least, a minimum requirement.” (*Carlson v. United States* (1997) 126 F.3d 915, 921.)

In considering all the foregoing, we are not persuaded that there is anything “unusual” about appellants’ sale of their business, such that imposition of the penalty would be against equity and good conscience. While this may have been an out of the ordinary occurrence for appellants, it is not substantively different than an unexpected collapse of the stock market, nor is it similar to any of the above situations warranting waiver of the penalty, because in those instances, the underpayment was attributable to an event beyond the control of the taxpayer. And regardless, it was not the sale of the business which directly caused the underpayment, but rather, it was due to appellants’ admitted ignorance of the law and their inability to properly calculate their estimated tax installments. It is well-established that mistake or ignorance of the law is insufficient to demonstrate reasonable cause. (*Appeal of Lillian Price Trust*, 94-SBE-011, Nov. 30, 1994; *Appeal of J. Morris and Leila G. Forbes*, 67-SBE-042, Aug. 7, 1967.)³ Failure to meet the minimum standard of reasonable cause indicates that the limited circumstances for which waiver of the penalty is warranted is not present here. Appellants’ history of compliance, and the fact that they paid the taxes before the due date, while commendable, does not excuse

³ Published decisions of the BOE, designated by “SBE” in the citation, are generally available for viewing on the BOE’s website at: <<http://www.boe.ca.gov/legal/legalopcont.htm>>.

their failure to timely pay the final estimated tax installment. Accordingly, while appellants' underpayment may have been unintentional, and perhaps understandable given the circumstances, it did not stem from an unusual circumstance, and thus does not warrant waiver of the penalty under the law.

HOLDING

Waiver of the underpayment of estimated tax penalty is not warranted.

DISPOSITION

FTB's action is sustained.

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Nguyen Dang
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Nguyen Dang
Administrative Law Judge

We concur:

DocuSigned by:
Douglas Bramhall
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Douglas Bramhall
Administrative Law Judge

DocuSigned by:
Kenneth Gast
FD75A3136CB34C2...

Kenneth Gast
Administrative Law Judge