

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18083677
NOAM H. ARZT AND HEIDI L. ARZT) Date Issued: July 10, 2019
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OPINION

Representing the Parties:

For Appellants: Noam H. Arzt

For Respondent: Anne Mazur, Specialist

For Office of Tax Appeals: Ellen L. Swain, Tax Counsel

J. ANGEJA, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Noam H. Arzt and Heidi L. Arzt (appellants) appeal an action by the respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$2,114 for the 2017 tax year.

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

ISSUE

Whether appellants are entitled to abatement of the estimated tax penalty.

FACTUAL FINDINGS

1. Appellants filed their 2017 California resident tax return on February 16, 2018. Appellants reported California adjusted gross income of \$1,425,439 and total tax liability of \$149,095.
2. Appellants had \$146 withheld and made \$145,700 of estimated and other payments, which left a balance of \$3,249 due reflected on the return. The estimated and other payments include the following: a transfer from the 2016 tax year of \$8,700 on April

15, 2017, an estimated payment of \$137,000 on January 5, 2018, and a return payment of \$5,363 on April 13, 2018.

3. In a Notice of Tax Return Change – Revised Balance, dated February 27, 2018, FTB notified appellants that appellants had a balance due of \$5,363, which included the self-assessed \$3,249 tax and an underpayment of estimated tax penalty of \$2,114.
4. Appellants protested the imposition of the estimated tax penalty. When FTB denied appellants’ protest of the penalty, appellants paid the balance due of \$5,363 on April 13, 2018 and filed a refund request for the penalty amount. FTB denied the refund claim and appellants filed this timely appeal.

DISCUSSION

R&TC section 19136 incorporates by reference, with certain modifications, Internal Revenue Code (IRC) section 6654, which imposes a penalty for the underpayment of estimated tax where an individual taxpayer’s installment payments are less than the amounts due at the end of the installment periods. In relevant part, IRC section 6654(d)(1)(B) defines the required annual payment (i.e., the total of the estimated tax payments) as the lesser of: (1) 90 percent of the tax shown on the return for the taxable year (or, if no return is filed, 90 percent of the tax for such year); or (2) 100 percent of the tax shown on the return for the prior taxable year (i.e., safe harbor provision). R&TC section 19136.3, which modifies IRC section 6654(d)(1)(B) for taxable years beginning on or after January 1, 2009, removes the safe harbor provision for taxpayers who report adjusted gross income of over \$1 million. Such taxpayers are required to make estimated tax payments based upon their current year’s income. Since appellants reported adjusted gross income of \$1,425,439, appellants were required to make total estimated payments equal to 90 percent of their tax liability by January 15, 2018. (R&TC, § 19136.3; IRC, § 6654(d)(1)(B)(i).) Appellants’ required annual payment was \$134,185.50 (i.e., 90 percent x \$149,095). Although appellants paid a total of \$145,700 in estimated tax payments, the payments were not timely.

Appellants’ installment payments were due on April 18, 2017 (30 percent of the required annual payment), June 15, 2017 (40 percent of the required annual payment), September 15, 2017 (zero percent of the required annual payment), and January 16, 2018 (30 percent of the required annual payment). (R&TC, § 19136.1(a)(2).) Since appellants made a payment of

\$8,700 on April 15, 2017, and no other payments by June 15, 2017, appellants underpaid the April 18, 2017 and June 15, 2017 installment payments.

The imposition of the underpayment of estimated tax penalty is mandatory and there is no reasonable cause exception to the estimated tax penalty. (*Appeal of McEwen* (85-SBE-091) 1985 WL 15898.) IRC sections 6654(e)(3)(A) and (B) provide two specific waivers to the imposition of the penalty if either of the following conditions are satisfied: (1) by reason of casualty, disaster, or other unusual circumstances, the imposition of the penalty would be against equity and good conscience; or (2) the taxpayer retired at the age of 62 or older, or became disabled, in the tax year at issue or in the prior tax year, *and* the underpayment was due to reasonable cause and not due to willful neglect.

Appellants do not protest the imposition or computation of the penalty. Instead, appellants argue that it was the first in 15 years of living in California that their income exceeded \$1 million, which triggered the California rule regarding estimated taxes, “which is substantially different than the Federal rule for withholding and most other state withholding rules.” Likewise, appellants’ representative argued before FTB that the penalty amount should be refunded based on reasonable cause, as the representative was not aware of the modification by R&TC section 19136.3. However, there is no general reasonable cause exception to the estimated tax penalty (*Appeal of Scanlon*, 2018-OTA-075P¹), and appellants have not alleged or shown that they qualify for the two waivers in IRC section 6654(e)(3). Accordingly, appellants have not shown error in FTB’s imposition of the underpayment of estimated tax penalty.

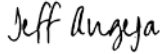
¹ Office of Tax Appeals opinions (designated “OTA”) may be found at: <https://ota.ca.gov/opinions/>.

HOLDING


Appellants are not entitled to abatement of the estimated tax penalty.


DISPOSITION

FTB's action in denying appellants' claim for refund is sustained.

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Jeffrey G. Angeja
Administrative Law Judge

We concur:

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Tommy Leung
Administrative Law Judge

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Joshua Lambert
Administrative Law Judge