

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
JUSTIN CALDBECK AND
SARAH CALDBECK

) OTA Case No. 19014269
)
) Date Issued: September 9, 2019
)
)
)

OPINION

Representing the Parties:

For Appellants: Juan Jefferson, EA

For Respondent: Diane M. Deatherage, Program Specialist II

R. Tay, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Justin Caldbeck and Sarah Caldbeck (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$8,289.46 for the 2017 tax year.

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

ISSUES

1. Whether appellants are entitled to a refund of \$7,698 for the estimated tax penalty for the 2017 tax year.
2. Whether appellants are entitled to a refund of interest in the amount of \$591.46 for the 2017 tax year.

FACTUAL FINDINGS

1. On October 15, 2018, appellants timely filed a California income tax return for the 2017 tax year. Appellants reported a California adjusted gross income of \$3,958,528 and a total tax of \$464,053.
2. Appellants made tax payments for the 2017 tax year in the amounts of: \$10,589 on April 15, 2017, \$65,000 on June 14, 2017, \$14,000 on September 28, 2017, \$125,000 on

January 18, 2018, and \$225,000 on April 14, 2018. Appellants had no income tax withholdings.

3. On their 2017 FTB Form 5805 - Underpayment of Estimated Tax by Individuals and Fiduciaries, filed with appellants' California income tax return, appellants self-assessed the estimate penalty in the amount of \$7,085.
4. FTB reviewed appellants' 2017 California income tax return and proposed an assessment to increase the estimated tax penalty by \$7,698. FTB issued a Notice of Tax Return Change dated November 19, 2018, which included the proposed assessment of estimated tax and interest.
5. Appellants paid the \$7,698 estimated tax penalty assessment and \$591.46 of interest on November 26, 2018, and filed a claim for refund dated November 28, 2018. Appellants requested abatement of the estimated tax penalty contending that they made an estimated tax payment in the amount of \$100,000, but mistakenly sent the payment to the Internal Revenue Service (IRS). Appellants argued that their good faith effort is grounds for penalty abatement.
6. FTB denied appellants' claim for refund and issued a Notice of Action dated December 21, 2018. This timely appeal follows.

DISCUSSION

Generally, FTB's proposed assessment is presumed correct, and the taxpayer has the burden of providing evidence to show error in that determination. (*Hardy v. Commissioner* (9th Cir. 1999) 181 F.3d 1002, 1004-1005; *Rapp v. Commissioner* (9th Cir. 1985) 774 F.2d 932, 935.) In this appeal, FTB's proposed assessment is based on undisputed facts that show appellants failed to make timely estimated tax payments and timely pay their California tax, and so, are liable for the estimated tax penalty and interest. The burden of proof is on appellants to show that FTB erred in its assessment of the estimated tax penalty and interest or show that they are entitled to abatement.

1. Estimated Tax Penalty Assessment

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. (R&TC, § 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 to be paid by persons who owe more than \$500 in tax, after applying income tax withholdings and credits. (R&TC, § 19136(c)(2).) Estimated tax payments are due four times a year pursuant to the schedule set forth in Revenue and Taxation Code section 19136.1. 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. (R&TC, § 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. (R&TC, § 19136.1(b)(1); IRC, § 6654(d).)

On appeal, appellants contend that they made timely estimated tax payments and satisfied the statutory requirements. It is undisputed that the law required appellants to make payments of \$125,294.31 by April 17, 2017, \$167,059.08 by June 15, 2017 and \$125,294.31 by January 16, 2018. Although appellants claim that they made timely payments, FTB's records show appellants only made one timely payment of \$10,589. Appellants have not provided any other evidence to rebut FTB's documents to show that they made timely payments. Thus, since appellants failed to make timely estimated tax payments, appellants were liable for the estimated tax penalty.

Appellants dispute FTB's assessment of the estimated tax penalty, but do not dispute FTB's calculation of the estimated tax penalty. Rather, appellants contend that FTB's assessment is erroneous because appellants made estimated tax payments in an amount that was greater than 110% of their prior year's California total tax, which satisfies the requirement found in IRC section 6654(d)(1)(B)(ii). However, California does not apply IRC section 6654(d)(1)(B)(ii) for taxpayers whose adjusted gross income is equal to or greater than \$1 million, as is the case here. The provisions of IRC section 6654(d)(1)(B)(ii) do not apply to appellants' 2017 estimated tax payment obligation, and appellants have not shown they made timely payments under the law.

Finally, there is no reasonable cause provision for abatement of the estimated tax penalty. 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* T.C. Memo. 2012-131; *Estate of Ruben v. Commissioner* (1960) 33 T.C. 1071,

1072); *Appeal of Weaver Equipment Company*, 80-SBE 048, 1980 WL 4976; see also, e.g., Internal Revenue Manual 20.1.3.1.6.1 (December 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. (IRS Field Service Advisory (June 2, 1994) 1994 WL 1725487.) 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.*)

Appellants' \$100,000 payment to the IRS in 2017, although it may have been an honest mistake, is not grounds to justify abatement. We find no provision in the law that allows a taxpayer's good faith payment, mistakenly made to another party, to relieve that taxpayer of the estimated tax penalty. Appellants have not provided any other legal basis to support their position and do not contend that the limited exceptions to the estimated tax penalty apply here. We find no grounds to support such a finding.

2. Interest Assessment

If any amount of tax is not paid by the due date, interest is required to be imposed from the due date until the date the taxes are paid. (R&TC, § 19101(a).) Imposition of interest is mandatory, and it can only be abated in certain limited situations when authorized by law.¹ (*Appeal of Amy M. Yamachi* (77-SBE-095) 1977 WL 3905.) Interest is not a penalty imposed on a taxpayer, it is merely compensation for the use of money, and there is no reasonable cause exception to imposition of interest. (*Appeal of Audrey C. Jaegle* (76-SBE-070) 1976 WL 4086; *Appeal of Yvonne M. Goodwin* (97-SBE-003) 1997 WL 258474.) The Office of Tax Appeals has jurisdiction to determine whether FTB's failure to abate interest under R&TC section 19104 was an abuse of discretion; if so, we may order an abatement of interest. (R&TC, § 19104 (b)(2)(B); *Appeal of Ernest J. Teichert* (99-SBE-006) 1999 WL 1080256.)

Here, appellants' 2017 California tax was due on April 17, 2018, but was not paid until November 26, 2018. Due to appellants' late payment of tax, FTB is required to charge interest on the untimely payment. Although appellants contend that FTB's assessment of interest was

¹ Other statutory interest abatement provisions are not applicable to the facts, and not discussed further.

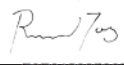
improper, appellants provide no facts, reasons or arguments to show that FTB's interest assessment was improper or incorrect. Furthermore, appellants offer no reason to justify interest abatement, and we find no grounds to support such a finding.

HOLDINGS


1. Appellants have not shown FTB erred in its assessment of the estimated tax penalty for the 2017 tax year.
2. Appellants have not shown that they are entitled to a refund of interest for the 2017 tax year.

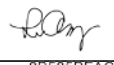
DISPOSITION

FTB's denial of appellants' claim for refund of the estimated tax penalty and interest is sustained.

DocuSigned by:

F8E81582726F448...
Richard I. Tay
Administrative Law Judge

We concur:

DocuSigned by:

3CADA62FB4864CB...
Andrew Kwee
Administrative Law Judge

DocuSigned by:

8E585BFA08946D...
Linda C. Cheng
Administrative Law Judge