

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18093795
MITCHELL R. GARLAND AND)
STEPHANIE GARLAND) Date Issued: July 29, 2019
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OPINION

Representing the Parties:

For Appellants: James H. Bock, CPA
For Respondent: Anne Mazur, Specialist
For Office of Tax Appeals: William J. Stafford, Tax Counsel III

J. ANGEJA, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Mitchell R. Garland and Stephanie Garland (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants' claim for refund of \$2,238 for the 2017 tax year.

Appellants waived their right to an oral hearing and therefore this appeal is being decided on the written record.

ISSUE

Whether appellants have demonstrated that they are entitled to a refund of the underpayment of estimated tax penalty.

FACTUAL FINDINGS

1. Appellants filed a timely joint 2017 California income tax return, reporting California adjusted gross income (AGI) of \$3,385,064, and a total tax of \$410,236.

2. After claiming payments of \$448,439 (\$3,639 in withholdings and \$444,800 in estimated payments),¹ appellants' return showed overpaid tax of \$38,203, \$2,400 of which they requested be applied to the 2018 tax year.
3. The return also reported an estimated tax penalty of \$2,238 and a balance of \$33,565 due to appellants, which FTB refunded on May 22, 2018.
4. Subsequently, appellants requested a refund of the estimated tax penalty.
5. When FTB denied appellants' claim for refund, 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., the prior year's liability 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 prior year's liability 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.

Here, since appellants reported adjusted gross income of \$3,385,064, appellants were required to make total estimated payments equal to 90 percent of their tax liability by the respective due dates for those payments. (See R&TC, § 19136.3; IRC, § 6654(d)(1)(B)(i).) Appellants' required annual payment was \$369,212.40 (i.e., 90 percent x \$410,236). Although appellants paid a total of \$448,439 in estimated tax payments, the payment for the second quarter was not timely (see fn. 1).

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 Scanlon*, 2018-OTA-075P.)

¹ Appellants made an estimated tax payment of \$131,400 on April 15, 2017; no timely second quarter payment; a late payment of \$131,400 on November 26, 2017; and a timely fourth quarter payment of \$182,000 on December 30, 2017.

IRC section 6654, subdivisions (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 computation or imposition of the penalty, but instead contend that it should be abated based on reasonable cause. Appellants assert that they exercised ordinary business care and prudence in meeting their tax obligation because they paid estimated tax liability based on the prior-year tax liability “as they had done in the past,” and they did not know to timely notify their tax advisor of substantial income allocated to them during the 2017 tax year. In addition, appellants contend that pursuant to a 2014 FTB Tax News article and R&TC section 19136.7(b), the estimated tax penalty can be abated if a taxpayer exercised ordinary care and business prudence.

First, we note that there is no general reasonable cause exception to the estimated tax penalty, and appellants have not alleged or shown that they qualify for waiver pursuant to IRC section 6654(e)(3). Second, appellants’ reliance on R&TC section 19136.7(b) is misplaced, because it precludes FTB from imposing the estimated tax penalty where an underpayment of estimated tax is attributable to an erroneous action of FTB. Here, appellants have not alleged or shown that an erroneous action of FTB occurred.

Likewise, appellants’ reliance on the August 2014 FTB Tax News article is also misplaced because the article is merely informational and is not authoritative. Further, the article lists penalties that may be abated due to reasonable cause—but the estimated tax penalty is not included on that list because the law concerning the estimated tax penalty does not provide for a general reasonable cause exception.

Accordingly, appellants have not shown error in FTB’s imposition of the underpayment of estimated tax penalty.

HOLDING

Appellants have not demonstrated that they are entitled to a refund of the underpayment of estimated tax penalty.

DISPOSITION

FTB's denial of appellants' claim for refund is sustained.

DocuSigned by:



Jeffrey G. Angeja
Administrative Law Judge

We concur:

DocuSigned by:



John O. Johnson
Administrative Law Judge

DocuSigned by:



Daniel K. Cho
Administrative Law Judge