

FACTUAL FINDINGS

1. Appellants filed a timely joint 2017 California nonresident (540NR) return on April 10, 2018, reporting a California adjusted gross income (AGI) of over \$1 million and a tax liability of \$103,909.
2. After claiming payments of \$103,339 (\$1,339 in withholdings and \$102,000 in estimated payments), appellants' return showed a balance due of \$570 (i.e., \$103,909 of tax due minus \$103,339 of payments made).²
3. On August 23, 2018, FTB sent appellants a Notice of Tax Return Change – Revised Balance, indicating imposition of an estimated tax penalty of \$989 and requesting full payment by September 7, 2018.
4. On September 12, 2018, appellants requested abatement of the estimated tax penalty and interest. On November 28, 2019, appellants remitted payment of \$989 for their estimated tax penalty.
5. On February 14, 2019, FTB sent appellants a Notice of State Income Tax Due, indicating imposition of interest of \$18.02 that accrued on the estimated tax penalty. On February 14, 2019, appellants remitted a payment of \$18.02. By remitting a full payment of their estimated tax penalty and interest, appellants' request for abatement converted into a claim for refund.
6. FTB denied appellants' claim for refund on March 26, 2019. This timely appeal followed.

DISCUSSION

Issue 1 - Whether appellants have demonstrated that they are entitled to an abatement of the estimated tax penalty.

Except as otherwise provided, R&TC section 19136 conforms to Internal Revenue Code (IRC) section 6654 and imposes an estimated tax penalty for the failure to timely make estimated income tax payments. The estimated tax penalty is akin to an interest charge and applies from the due date of the estimated tax payment, until the date that it is paid. (*Appeal of Saltzman*,

² Appellants made an estimated tax payment of \$8,000 on April 15, 2017; an estimated tax payment of \$8,000 on June 15, 2017; an estimated tax payment of \$8,000 on September 15, 2017; an estimated tax payment of \$70,000 on December 7, 2017; and a final estimated tax payment of \$8,000 on December 28, 2017.

2019-OTA-070P.) 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 R&TC section 19136.1(a)(2). In the case of a married couple filing jointly reporting AGI equal to or greater than \$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)(1)(B).)

It is undisputed that the law required appellants to make payments of 30 percent of their total estimated tax liability on April 18, 2017, 40 percent on June 15, 2017, and 30 percent on January 16, 2018.³ Although appellants claim they made timely payments, FTB's records clearly show that appellants only made one timely payment of the proper amount of 30 percent of their estimated tax liability by January 1, 2018. Appellants have not provided any other evidence to refute FTB's documents to show that they made timely payments. Since appellants failed to make timely estimated tax payments, appellants are liable for the estimated tax penalty.

Here, appellants do not dispute FTB's calculation of the estimated tax penalty. Instead, appellants contend that FTB's assessment is incorrect because appellants made estimated tax payments in the amount greater than 100 percent of their prior year's California total tax, which would satisfy the requirement found in IRC section 6654(d)(1)(B)(ii). However, California does not conform to IRC section 6654(d)(1)(B)(ii) for taxpayers whose AGI is equal to or greater than \$1 million, which is the case here. (R&TC, § 19136.3(a).)

The estimated tax penalty imposed under IRC section 6654 is mandatory unless appellants can establish that a statutory exception applies. (*Nitschke v. Commissioner*, T.C. Memo. 2016-78.) IRC section 6654(e)(3) provides limited exceptions to waive the estimated tax penalty in two situations involving extreme hardship: (1) if, by reason of casualty, disaster, or other unusual circumstances, imposing the penalty would be against equity and good conscience; or, (2) if the late payment was due to reasonable cause and not willful neglect, but only for individuals who retired after attaining the age of 62 in the taxable year or who became disabled in the taxable year. (IRC, § 6654(e)(3)(A)-(B).)

Appellants have not presented any facts that show they meet the requirements of the exceptions provided in IRC section 6654(e)(3). Further, there is no evidence of these

³ Usually, estimated tax is due April 15th. However, in 2017, the 15th was on a Saturday and the 17th was a holiday. Therefore, payment was due April 18th. (Cal. Code Regs., tit. 18, § 18566.)

circumstances in the record. For these reasons, appellants have not demonstrated that they are entitled to an abatement of the estimated tax penalty.

Issue 2 - Whether appellants have demonstrated that they are entitled to an abatement of interest.

If any amount of the 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).) “Interest is not a penalty but is compensation for the taxpayer’s use of money which should have been paid to the state.” (*Appeal of Balch*, 2018-OTA-159P, p. 7.) Imposition of interest is mandatory, and it can only be abated in certain limited situations when authorized by law. (*Ibid.*) To obtain relief from interest, appellants must qualify under the R&TC provisions of either sections 21012, 19112, or 19014.

Here, the relief of interest under R&TC section 21012 is not relevant in this case, as FTB did not provide appellants with any written advice. R&TC section 19112 states that interest may be waived by FTB if appellants can show that their inability to pay was due to extreme financial hardship caused by a significant disability or catastrophic circumstance. The relevant statute gives FTB the discretion to decide whether appellants have made a showing of extreme financial hardship. There is no provision in R&TC section 19112 which would allow the Office of Tax Appeals (OTA) to review FTB’s interest determinations based on a claim of financial hardship. (*Appeal of Moy*, 2019-OTA-057P.)


OTA 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 Teichert* (99-SBE-006) 1999 WL 1080256.) Appellants’ 2017 California estimated tax payments were not timely paid. 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 improper, appellants provide no facts, reasons, or arguments to show that FTB’s interest assessment was improper or incorrect. There is no reasonable cause exception to abate interest. Therefore, we find no grounds to support an abatement of interest.

HOLDINGS


1. Appellants have not demonstrated that they are entitled to an abatement of the estimated tax penalty.
2. Appellants have not demonstrated that they are entitled to an abatement of interest.

DISPOSITION

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

DocuSigned by:

6D3FE4A0CA514E7...
 Sara A. Hosey
 Administrative Law Judge

We concur:

DocuSigned by:

FD75A3136CB34C2...
 Kenneth Gast
 Administrative Law Judge

DocuSigned by:

2D8DE62EB65E4A6...
 Elliott Scott Ewing
 Administrative Law Judge

Date Issued: 4/3/2020