

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

G. MARKOVAND
K. MARKOV

) OTA Case No. 19115459
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OPINION

Representing the Parties:

For Appellants: Steven Moskowitz, CPA

For Respondent: Leoangelo C. Cristobal, Tax Counsel

N. DANG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, G. Markov and K. Markov (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$11,654 for the 2018 tax year.

Appellants waived their right to an oral hearing, and therefore we decide the matter based on the written record.

ISSUE

Whether waiver of the underpayment of estimated tax penalty is warranted due to an unusual circumstance such that the imposition of the penalty would be against equity and good conscience.

FACTUAL FINDINGS

1. Appellants failed to make sufficient estimated tax payments for the 2018 tax year, resulting in the imposition of an \$11,654 underpayment of estimated tax penalty pursuant to R&TC section 19136. The calculation of the penalty amount is not in dispute.
2. After paying this amount, appellants filed a refund claim seeking a penalty waiver.

DISCUSSION

California generally conforms to federal income tax law when imposing a penalty for the failure to make sufficient estimated tax payments. (R&TC, § 19136(a) [incorporating by reference Internal Revenue Code (IRC), § 6654].) However, as set forth in IRC section 6654(e)(3)(A), the penalty shall not be imposed 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.

Appellants argue that waiver of the penalty under this subsection is warranted because their underpayment was due to the “unusual” occurrence of two events: (1) significant changes to the federal income tax laws for 2018; and (2) a protracted federal government shutdown from December 22, 2018, through January 25, 2019, which ended after the due date of appellants’ final estimated tax payment had passed. Appellants explain that these events prevented them from estimating their 2018 tax liability because they were awaiting federal regulatory guidance to determine whether, under the 2018 amendments to the IRC, they would be required to recognize over eight million of income from various pass-through entities (which they ultimately did).

There is support for appellants’ position that a change in the tax laws or government inaction may warrant a penalty waiver. For instance, the Internal Revenue Service (IRS) has indicated that, after a review of the legislative history of IRC section 6654(e)(3)(A), it would waive the penalty where changes in the tax law or government inaction caused “extreme difficulty” in estimating or paying the tax due. (IRS Field Service Advisory (Jun. 2, 1994) 1994 WL 1725487 (FSA).) We agree with this interpretation.

However, the evidentiary record fails to support a penalty waiver on this basis. Here, appellants did not specify what tax law change allegedly caused their underpayment nor did they provide any evidence in support of their refund claim. This makes it difficult to ascertain the credibility of their assertion that a tax law change or government inaction was the cause of their underpayment and that, as a result, they suffered “extreme difficulty” in estimating their tax liability. Presumably, given the tax year at issue, appellants are referring to one or several of the amendments to the IRC provided in the federal Tax Cuts and Jobs Act (TCJA), which was enacted on December 22, 2017, and most of the amendments became effective on January 1, 2018. It is notable that for the 2018 tax year, California generally conforms to the IRC as of a

specified date of January 1, 2015, meaning that, for our purposes here, it did not adopt many of the 2017 IRC amendments provided in the TCJA. (See R&TC, § 17024.5(a)(1)(P).) We therefore fail to see how a federal tax law change that California generally does not conform to, much less a federal government shutdown, would cause appellants “extreme difficulty” in estimating their 2018 California tax liability.

Accordingly, based on the record before us, we conclude that appellants are not entitled to a penalty waiver.

HOLDING

Waiver of the underpayment of estimated tax is not warranted.

DISPOSITION

We sustain FTB’s action denying appellant’s refund claim for the 2018 tax year.

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Nguyen Dang
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Nguyen Dang
Administrative Law Judge

We concur:

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Cheryl Akin
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Cheryl L. Akin
Administrative Law Judge

DocuSigned by:
Kenneth Gast
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Kenneth Gast
Administrative Law Judge

Date Issued: 10/12/2020