

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
K. TO

) OTA Case No. 19125586
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OPINION

Representing the Parties:

For Appellant: Michelle N. Monticello, EA

For Respondent: Ahmed Alhazmi, Graduated Student Assistant

H. LE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, K. To (appellant) appeals an action by Franchise Tax Board (respondent) denying appellant’s claim for refund of \$834¹ for the 2018 tax year.

Appellant waived the right to an oral hearing; therefore, we decide the matter based on the written record.

ISSUE

Whether appellant has established a basis to abate the estimated tax penalty.

FACTUAL FINDINGS

1. On December 28, 2018, a corporation notified appellant that a dividend distribution would occur in 2018.
2. On January 3, 2019, a dividend of \$864,488.45 was posted to appellant’s brokerage account.

¹ On appeal, appellant concedes a total of \$171.45. Thus, although respondent denied appellant’s refund claim of \$834, the amount in dispute is now \$662.55. Also, since appellant’s concession relates to the underpayment of estimated tax penalty (estimated tax penalty) imposed for the second quarter, this opinion will solely focus on the estimated tax penalty imposed for the fourth quarter relating to a dividend distribution made in late 2018.

3. Appellant did not make a fourth estimated tax installment on or before January 15, 2019, for the 2018 tax year.
4. Appellant timely filed her 2018 income tax return, showing an adjusted gross income of \$1,065,267, and attached Form 5805, which computed a self-assessed estimated tax penalty of \$1,000.
5. Respondent processed appellant's return and adjusted appellant's account to reflect an estimated tax penalty of only \$834.
6. Appellant subsequently paid the estimated tax penalty, plus applicable interest, and filed a refund claim based on reasonable cause.
7. Respondent denied appellant's refund claim, and appellant then filed this timely appeal.

DISCUSSION

Except as otherwise provided, R&TC section 19136 conforms to Internal Revenue Code (IRC) section 6654, which imposes a penalty for the underpayment of estimated tax when a taxpayer's installment payments are less than the amounts due at the end of the installment periods. For California purposes, estimated tax payments are generally due four times a year, with the first installment due on April 15 of the current year (30 percent of the required annual payment), the second installment due on June 15 of the current year (40 percent of the required annual payment), the third installment having no payment due, and the fourth installment due on January 15 of the following year (30 percent of the required annual payment). (R&TC, § 19136.1.) 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).)

Appellant does not protest the imposition or computation of the estimated tax penalty. Instead, appellant argues that the estimated tax penalty should be abated under IRC section 6654(e)(3)(A) because she unexpectedly received notice of the \$864,488.45 dividend distribution sometime after the January 15, 2019 estimated tax payment due date. However, we find appellant's argument unpersuasive.

IRC section 6654(e)(3)(A) provides that the taxing agency may waive the estimated tax penalty if it determines that, "by reason of casualty, disaster, or other unusual circumstances the

imposition of [the estimated tax penalty] would be against equity and good conscience.”² The phrase “casualty, disaster, or other unusual circumstances” generally refers to unexpected events that cause a hardship or loss such that, due to the circumstances, it would be “against equity and good conscience” to impose the penalty. (*Appeal of Johnson*, 2018-OTA-119P.) 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. (*Appeal of Mazdyasni*, 2018-OTA-049P.) On the other hand, stock market volatility is not an unusual circumstance. (*Ibid.*)

Here, we are not persuaded that the appellant’s circumstances constituted a “casualty, disaster, or other unusual circumstances” that would cause the imposition of the estimated tax penalty to be “against equity and good conscience.” Appellant’s circumstances do not involve a tax law change, disaster, required accounting method change, or a government action or inaction. Rather than suffering an unexpected hardship, appellant received a substantial dividend payment of \$864,488.45. While the estimated tax penalty is often referred to as a penalty, it effectively imposes an interest charge to compensate the government for the time value of tax that is due but is not paid until a later date. (*Appeal of Saltzman*, 2019-OTA-070P.) We find that imposing an interest charge on tax that was due on the payment received by appellant does not offend “equity and good conscience.”³

Appellant further argues that the estimated tax penalty should be abated based on reasonable cause and not willful neglect under R&TC section 19132. However, R&TC section 19132 applies to the late payment penalty, not the estimated tax penalty. No provision in the R&TC (or the IRC incorporated by the R&TC) allows the estimated tax penalty to be abated based solely on a finding of reasonable cause. As a result, there is no general reasonable cause exception to the imposition of the estimated tax penalty. (*Appeal of Johnson, supra.*)

² IRC section 6654(e)(3)(B) provides another avenue for waiver of the penalty where the taxing agency determines that (i) during the applicable tax year or the preceding year, the taxpayer either retired after having attained age 62, or became disabled, and (ii) the underpayment was due to “reasonable cause” and not due to willful neglect. However, there is no evidence or argument that this provision is applicable; therefore, we will not address it further.

³ We also note that although appellant alleges the dividend payment was unanticipated, she was notified of the dividend payment on December 28, 2018, and the dividend posted to her brokerage account on January 3, 2019—before the January 15, 2019 due date of her final estimated tax payment installment for the 2018 tax year.

Appellant further argues that the safe harbor under IRC section 6654(d)(1)(B)(ii) applies, which provides that when a high-income earner pays 110 percent or more of the prior year’s tax, he or she is not liable for the estimated tax penalty. California law, however, expressly decoupled from that safe harbor provision for high-earning taxpayers (those with adjusted gross income of \$1 million or more) for tax years beginning on or after January 1, 2009. (R&TC, § 19136.3.) Appellant’s adjusted gross income in 2018 was \$1,065,267. Thus, the safe harbor provision does not apply here.

Finally, as to appellant’s reference to her history of good tax compliance, we note that although the IRS administers a program called “First Time Abate” under which it abates penalties if a taxpayer has timely filed returns and paid taxes due for the preceding three years, respondent has no such program.⁴

HOLDING

Appellant failed to establish a basis to abate the estimated tax penalty.

DISPOSITION

We sustain respondent’s action denying appellant’s refund claim.

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Huy "Mike" Le
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Huy "Mike" Le
Administrative Law Judge

We concur:

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Kenneth Gast
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Kenneth Gast
Administrative Law Judge

DocuSigned by:
Natasha Ralston
DE5090E566FD40F...
Natasha Ralston
Administrative Law Judge

Date Issued: 10/22/2020

⁴The California Legislature has considered and declined to adopt bills that would change California law to allow a first-time abatement for taxpayers with a history of filing and payment compliance. (See Assem. Bill No. 1777 (2013-2014 Reg. Sess.))