

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 20015733
J. DIMICHELE AND)
B. DIMICHELE)
_____)

OPINION

Representing the Parties:

For Appellants: J. and B. DiMichele

For Respondent: Joel M. Smith, Tax Counsel III

For Office of Tax Appeals: Nicholas Awakuni, Graduate Student
Assistant

A. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. and B. DiMichele (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$3,363 for the 2018 tax year.

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

ISSUE

Whether appellants have established that the estimated tax penalty should be waived.

FACTUAL FINDINGS

1. Appellants filed a 2018 Form 540 California Resident Income Tax Return on September 13, 2019. Appellants reported taxable income of \$2,167,085, resulting in a total tax of \$248,664. After applying total payments of \$254,529, appellants reported overpaid tax of \$5,865 and applied that amount to their 2019 estimated tax.
2. After accepting appellants’ 2018 return, FTB imposed an estimated tax penalty of \$3,363.
3. Appellants subsequently paid the estimated tax penalty, plus applicable interest, and filed a refund claim requesting abatement of the estimated tax penalty.

4. FTB denied appellants' claim for refund.
5. Appellants timely filed this appeal.

DISCUSSION

Except as otherwise provided, R&TC section 19136 conforms to Internal Revenue Code (IRC) section 6654 and imposes a penalty for the failure to timely make estimated income tax payments at the end of the installment periods. (R&TC, § 19136(a); IRC, § 6654(l).) For California purposes, installment tax payments are due on April 15, June 15, and January 15 of the following tax year. (R&TC, § 19136.1; IRC, § 6654(c)(2).) 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); *Appeal of Johnson*, 2018-OTA-119P.) There is no general reasonable cause exception for the estimated tax penalty. (*Appeal of Johnson, supra.*)

There is no dispute that appellants did not timely make estimated tax payments. Instead, appellants contend that they received significantly more income than anticipated after exercising stock options and the forced sale of stock from a large, complicated merger transaction. Appellants argue that they could not estimate their income from these events because the necessary financial documentation was not available to them until after the January 15, 2019 due date for the last estimated tax payment. Appellants also note their good filing history and the fact that the actual tax liability was timely paid as reasons that the penalty should be abated.

IRC section 6654(e)(3)(A) provides a limited exception to waive the penalty if, by reason of casualty, disaster, or other unusual circumstances, imposing the penalty would be against equity and good conscience.¹ 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 inequitable to impose the estimated tax penalty. (*Johnson, supra.*) A large financial gain is not the type of unexpected event qualifying for relief. (*Ibid.*) The estimated tax penalty has been waived by the Internal Revenue Service 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.) A financial transaction, however, no matter how complex, is not an unusual circumstance

¹ IRC section 6654(e)(3)(B) also provides for the waiver of the penalty if the underpayment was due to reasonable cause and not to willful neglect, but only for individuals who retired after attaining the age of 62 in the tax year or who became disabled in the tax year. Appellants do not contend, and the appeal record does not indicate, that either appellant retired or became disabled during 2018.

warranting penalty abatement. (*Ibid.*; see also *Farhoumand v. Commissioner*, T.C. Memo. 2012-131 [holding that stock market volatility is not an unusual circumstance].) Thus, appellants have not established that their failure to make timely estimated tax payments was due to casualty, disaster, or other unusual circumstance and that the penalty would be against equity and good conscience sufficient to warrant a penalty waiver.

Lastly, regarding appellants' reference to their good compliance history, unlike the federal First Time Penalty Abatement program, the State of California has not adopted a comparable penalty abatement program. (*Appeal of Xie*, 2018-OTA-076P.) Thus, we cannot consider appellants' good compliance history as a basis to waive the estimated tax penalty.

HOLDING

Appellants have not established that the estimated tax penalty should be waived.

DISPOSITION

FTB's action is sustained.

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Andrea L.H. Long

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Andrea L.H. Long

Administrative Law Judge

We concur:

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Nguyen Dang

Administrative Law Judge

DocuSigned by:

Sheriene Anne Ridenour

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Sheriene Anne Ridenour

Administrative Law Judge

Date Issued: 4/7/2021