

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 20056200  
A. ALJOE AND )  
D. ALJOE )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: A. Aljoe and D. Aljoe

For Respondent: Meghan McEvelly, Tax Counsel III

A. ROSAS, Administrative Law Judge: Under Revenue and Taxation Code (R&TC) section 19324, appellants A. Aljoe and D. Aljoe appeal respondent Franchise Tax Board’s action in denying appellants’ claim for refund of \$27,582 for tax year 2018. Appellants waived their right to an oral hearing, and therefore we decide this matter based on the written record.

**ISSUE**

Whether appellants have established that the underpayment of estimated tax penalty (estimated tax penalty) should be abated.

**FACTUAL FINDINGS**

1. During tax year 2018, appellants sold shares of stock, which resulted in capital gains of over \$3.8 million.
2. Appellants made estimated tax installment payments as follows: \$2,492 by April 16, 2018; \$3,322 by June 15, 2018; and \$2,492 by January 15, 2019. These three installment payments totaled \$8,306.
3. Appellants timely filed their 2018 California Resident Income Tax Return. They reported California taxable income of over \$7.7 million and total tax of \$996,695. After applying the estimated tax payments of \$8,306, appellants reported total tax due of \$988,389, which they timely paid.

4. After respondent accepted and processed appellants' tax return, respondent imposed an estimated tax penalty in the sum of \$27,582. Respondent issued a Notice of Tax Return Change – Revised Balance, which showed that appellants owed a balance of \$27,737.34 by June 19, 2019. This balance included interest of \$155.34 due through May 30, 2019. Respondent received two payments from appellants: a payment of \$27,775.36 credited to appellants' tax account effective June 18, 2019; and a payment of \$15.29 credited to appellants' tax account effective July 19, 2019. These two payments totaled \$27,790.65, which represented the estimated tax penalty of \$27,582 and total interest of \$208.65.
5. Appellants submitted a claim for refund of \$27,582, which respondent denied. This timely appeal followed.

### DISCUSSION

Internal Revenue Code (IRC) section 6654 imposes an addition to tax, which is treated and often referred to as a penalty, when an individual fails to timely pay estimated tax.<sup>1</sup> Subject to certain exceptions not relevant to the issue on appeal, R&TC section 19136 incorporates IRC section 6654. The estimated tax penalty is similar to an interest charge in that it is calculated by applying the applicable interest rate to the underpayment of estimated tax. (See IRC, § 6654(a); see also R&TC, §§ 19136(b) and 19521.<sup>2</sup>)

Appellants argue that the law regarding the penalty imposed under R&TC section 19132 states that the penalty will be imposed unless it is shown that the failure is due to reasonable cause and not due to willful neglect. However, it appears that appellants may be confusing the late-payment penalty under R&TC section 19132 with the estimated tax penalty under R&TC section 19136. Unlike the late-payment penalty, there is no provision in the IRC or R&TC that 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 imposing the estimated tax penalty. (*Appeal of Johnson*, 2018-OTA-119P (*Johnson*); *Adams v. Commissioner*, T.C. Memo. 2013-7.) The estimated tax penalty is mandatory unless the taxpayer establishes that a statutory exception applies. (*Johnson, supra*; *Nitschke v. Commissioner*, T.C. Memo. 2016-78.)

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<sup>1</sup> Where estimated tax payments are due, R&TC section 19136.1(a)(2) generally requires, for California income tax purposes, that the payments be made in installments on or before April 15 and June 15 during the applicable tax year, and January 15 of the immediately succeeding tax year.

<sup>2</sup> With modification, RT&C section 19521 conforms to the federal interest provisions in IRC section 6621.

When a taxpayer's adjusted gross income is equal to or greater than \$1 million, the required annual payment is 90 percent of the current tax shown on the return. (IRC, § 6654(d)(1)(B)(i); R&TC, § 19136.3.) For appellants, 90 percent of \$996,695 (total tax) is \$897,025.50. But appellants' three estimated tax installment payments totaled \$8,306, which resulted in an estimated tax penalty of \$27,582. Appellants do not protest the imposition or computation of the penalty. Instead, appellants argue that respondent should refund the penalty amount based on reasonable cause. Although, as noted above, there is no provision allowing for the abatement of the addition to tax based solely on reasonable cause, IRC section 6654(e)(3) provides two avenues by which the addition to tax may be waived. First, under IRC section 6654(e)(3)(A), respondent may waive the addition to tax if it determines that, "by reason of casualty, disaster, or other unusual circumstances the imposition of such addition to tax would be against equity and good conscience."

Second, under IRC section 6654(e)(3)(B), the addition to tax may be waived if respondent 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. Thus, the issue of whether a taxpayer had reasonable cause for underpaying estimated tax only arises if, during the applicable tax year or the preceding year, the taxpayer either retired after having attained age 62, or became disabled. We will not discuss this second provision because appellants provide no evidence or argument that one of them either retired after having attained age 62 or became disabled during the applicable tax year (2018) or the preceding year (2017).

Thus, we focus on the first provision, IRC section 6654(e)(3)(A), and whether "by reason of casualty, disaster, or other unusual circumstances the imposition of such addition to tax would be against equity and good conscience." Appellants' position is that they sold shares of stock in 2018, which created an unusually large amount of taxable income. In *Farhoumand v. Commissioner*, T.C. Memo. 2012-131 (*Farhoumand*), the tax court considered whether this provision should apply to taxpayers who contended they acted in good faith but had a higher tax liability than expected. The tax court found that stock market volatility was not an unusual circumstance and that the Farhoumands' argument that they acted in good faith constituted a reasonable cause argument that was irrelevant because the estimated tax penalty statute provides no reasonable cause defense.

Like the tax court in *Farhoumand*, we are not persuaded that appellants' 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." 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. (*Johnson, supra.*) Here, rather than suffering an unexpected hardship, appellants sold appreciated stock that resulted in capital gains of over \$3.8 million. 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. We find that imposing an interest charge on tax that was due on the payment received by appellants does not offend "equity and good conscience."

Appellants argue that they reasonably relied on the advice provided by their tax professional, who advised them that their estimated tax payments would be sufficient because the payments represented 110 percent of the prior year's tax liability. Appellants argue that this establishes reasonable cause. However, as mentioned above, there is no general reasonable cause exception to imposing the estimated tax penalty. Thus, reliance on a tax professional is legally irrelevant for these purposes.

As to the argument that appellants' estimated tax payments of \$8,306 represented 110 percent of their prior year's tax liability, this refers to the safe harbor provision contained in IRC section 6654(d)(1). Under this safe harbor, when a high-income earner pays 110 percent or more of the prior year's tax, the taxpayer is not liable for the estimated tax penalty. California law, however, expressly abrogated 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.) Therefore, because the safe harbor provision does not apply here, appellants were required to make annual payments totaling 90 percent of the tax shown on appellants' return. (IRC, § 6654(d)(1)(B)(i); R&TC, § 19136.3.) Based on appellants' total tax of \$996,695, as shown on their return for tax year 2018, 90 percent is \$897,025.50.

Lastly, although appellants reference 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.)

HOLDING

Appellants did not establish that the estimated tax penalty should be abated.

DISPOSITION

We sustain respondent’s denial of appellants’ claim for refund.

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*Alberto T. Rosas*  
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Alberto T. Rosas  
Administrative Law Judge

We concur:

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*Cheryl Akin*  
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Cheryl L. Akin  
Administrative Law Judge

DocuSigned by:  
*AW*  
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Andrew Wong  
Administrative Law Judge

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