

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 20056218
R. FABRICANT AND)
G. FABRICANT)
_____)

OPINION

Representing the Parties:

For Appellant: Stephanie Freetly, CPA

For Respondent: Anne Mazur, Specialist

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R. Fabricant and G. Fabricant (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$38,087 for the 2018 taxable year.

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

ISSUE

Are appellants entitled to waiver of the penalty for underpayment of estimated tax (estimated tax penalty)?

FACTUAL FINDINGS

1. Appellants filed a timely California joint tax return for taxable year 2018. Appellants reported a total tax liability of \$1,590,627.¹
2. Appellants made estimated payments of \$83,045 on April 15, 2018; \$14,000 on August 6, 2018; \$15,000 on September 15, 2018; and an extension payment of

¹ Appellants’ 2017 total tax liability was \$54,108. FTB does not dispute that appellants paid more than 110 percent of the prior year’s total tax liability.

- \$1,435,000 on April 12, 2019. State income tax of \$46,417 was withheld from appellant-husband's income and remitted to California.
3. FTB imposed an estimated tax penalty of \$38,087, which appellants paid on November 9, 2019.
 4. Appellants filed an Underpayment of Estimated Tax by Individuals and Fiduciaries (FTB Form 5805) requesting a waiver of the estimated tax penalty.
 5. FTB denied the claim for refund, and this timely appeal followed.
 6. On appeal, appellants submit a document showing that appellant-husband retired on March 31, 2019, at which time he was 70 years old.

DISCUSSION

R&TC section 19136 conforms to Internal Revenue Code (IRC) section 6654 and imposes an estimated tax penalty for failure to timely make estimated tax payments. The penalty is like an interest charge in that it is calculated by applying the applicable interest rate to the underpayment of estimated tax. (*Appeal of Saltzman*, 2019-OTA-070P.) Taxpayers must pay 30 percent of estimated tax by April 15 of the taxable year, 40 percent by June 15 of the taxable year, and 30 percent by January 15 of the following year. (R&TC, § 19136.1(a)(2)); IRC, § 6654(d)(1)(A).)

No provision in the R&TC or IRC allows the estimated tax penalty to be abated based solely on a finding of reasonable cause. (*Appeal of Saltzman, supra.*) The estimated tax penalty is mandatory unless the taxpayer establishes that a statutory exception applies. (*Appeal of Johnson*, 2018-OTA-119P.)

Appellants do not dispute the calculation of the estimated tax penalty, nor that they underpaid estimated taxes on each of the three due dates. Instead, appellants make several arguments in their request for waiver of the estimated tax penalty. First, they claim that most of the income was due to a one-time capital gain on the sale of a business, the tax implications of the sale of the business were complex, and tax rules were uncertain at the time due to tax reform. As indicated above, there is no general reasonable cause exception to imposition of the estimated tax penalty.

Second, appellants claim that they paid more than 110 percent of the prior year's tax liability, so they should qualify for the exception found in the safe harbor in IRC section 6654(d)(1). California does not fully conform to the federal safe harbor in IRC

section 6654(d)(1), for taxpayers making a required annual payment of 110 percent of the tax shown on the return for the prior year. Instead, R&TC section 19136.3 provides that for taxable years beginning on or after January 1, 2009, the federal safe harbor in IRC section 6654(d)(1)(B)(ii) does not apply to individuals reporting California adjusted gross income (AGI) of more than \$1,000,000. The safe harbor does not apply to appellants because their AGI for the year exceeded \$1,000,000. Appellants argue that they exceeded that limit due to a one-time capital gain. However, there is no exception in the law to relieve appellants from the estimated tax penalty based on a one-time increase in AGI. Thus, the safe harbor does not apply to appellants for taxable year 2018.

Appellants' third argument is that appellant-husband retired on March 31, 2019, when he had already attained at least the age of 62. Appellants allege that the penalty should not have been imposed based on the exception found in IRC section 6654(e)(3)(B). IRC section 6654(e)(3)(B) provides for a limited exception to imposition of the estimated tax penalty when a taxpayer, after attaining the age of 62, retires during the taxable year at issue, or in the year preceding the taxable year at issue and the underpayment was due to reasonable cause and not willful neglect.² For appellants to qualify for that exception, appellant-husband's retirement would have to have been during 2018 (the taxable year at issue) or 2017 (the year preceding the taxable year at issue). Because appellant-husband's retirement did not occur until 2019, the exception does not apply.


² Another exception applies to taxpayers who became disabled during the current taxable year or in the preceding year. (IRC, § 6654(e)(3)(B)(i)(II).) The estimated tax penalty also will not apply if FTB 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. (IRC, § 6654(e)(3)(A).) Appellants have not alleged nor provided evidence to show that either of these exceptions apply to them.

HOLDING


Appellants have not established a basis to waive the estimated tax penalty.


DISPOSITION

FTB’s action denying appellants’ claim for refund is sustained.

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Teresa A. Stanley
Administrative Law Judge

We concur:

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Josh Lambert
Administrative Law Judge

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Natasha Ralston
Administrative Law Judge

Date Issued: 4/7/2021