

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

In the Matter of the Appeal of:

**S. BORLIK AND**  
**J. STEINHOOR**

) OTA Case No. 21047653  
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**OPINION**

Representing the Parties:

For Appellants:

S. Borlik  
J. Steinhour

For Respondent:

Christopher Cook, Tax Counsel

N. DANG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Borlik and J. Steinhour (appellants) appeal an action by the Franchise Tax Board (respondent) denying their claim for refund of \$1,230 for the 2019 tax year.

We decide this matter based on the written record because appellants waived their right to an oral hearing.

**ISSUE**

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

**FACTUAL FINDINGS**

1. Appellants filed a joint California Resident Income Tax Return for the 2019 tax year.
2. Because appellants' second estimated tax payment exceeded \$20,000, they were required to make this payment electronically.
3. Prior to the payment deadline, appellants transferred funds to their bank account sufficient to cover this payment and scheduled it using respondent's Web Pay system.

4. However, for unknown reasons, appellants' second estimated tax payment was unsuccessful, and this caused appellants' total estimated tax payments for the 2019 tax year to be insufficient.
5. Consequently, respondent assessed a \$1,230 underpayment of estimated tax penalty.
6. Appellants paid the amount due and filed a refund claim seeking waiver of the penalty.
7. Respondent denied appellants' refund claim and this timely appeal followed.

#### DISCUSSION

There exist only two conditions under which the underpayment of estimated tax penalty may be waived. These conditions are where an underpayment of tax was due to: (1) casualty, disaster, or other unusual circumstances such that imposition of the penalty would be against equity and good conscience; or (2) reasonable cause and not willful neglect, and either the taxpayer retired after having attained age 62 or became disabled, in the taxable year for which the estimated tax payments were required to be made or in the previous taxable year. (Internal Revenue Code (IRC), § 6654(e)(3)(A)-(B).)<sup>1</sup> The taxpayer bears the burden of proving that waiver of the penalty is warranted. (*Appeal of Saltzman*, 2019-OTA-070P.)

Appellants argue that waiver of the penalty is appropriate under both the above conditions. Appellants assert that their actions prior to the payment deadline, including their long history of timely meeting their tax obligations to the state, demonstrate their good faith intent to make a second estimated tax payment, and that these facts constitute reasonable cause for waiving the penalty. Appellants also contend that this was the first time they were required to make an electronic payment and given their lack of familiarity with respondent's Web Pay system, this should be considered an unusual circumstance such that imposition of the penalty would be against equity and good conscience. We conclude differently.

Appellants' position fails to consider that there is no general reasonable cause exception to the imposition of the underpayment of estimated tax penalty. (*Appeal of Saltzman, supra.*) To avail themselves of the reasonable cause exception, appellants must demonstrate that they had attained age 62 or became disabled in 2018 or 2019. (IRC, § 6654(e)(3)(B).) Appellants have failed to do so. Therefore, even assuming appellants had reasonable cause for failing to make

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<sup>1</sup> California conforms (with some modifications) to IRC section 6654 at R&TC section 19136.

sufficient estimated tax payments, appellants do not qualify for waiver of the penalty on this basis.

Appellants' contention concerning unusual circumstances is also misplaced. The provision containing this phrase is generally intended to refer to situations where the taxpayer suffered an unexpected and substantial hardship or loss, such that it would be "against equity and good conscience" to impose the penalty. (*Appeal of Johnson*, 2018-OTA-119P [the phrase "unusual circumstances" should generally be interpreted within the context of a casualty or disaster].) For example, the legislative history of IRC section 6654 indicates that waiver may be appropriate where an estimated tax payment was not made due to the death or serious illness of the taxpayer. (*Appeal of Mazdyasni*, 2018-OTA-049P.) The requirement that appellants make their second estimated tax payment electronically using respondent's Web Pay system was not unexpected, nor is it an event which inflicted significant hardship, or any loss, upon appellants. To some, the ability to make electronic payments might even be viewed as a convenience feature. Accordingly, we find appellants have not shown any "unusual circumstance" warranting waiver of the penalty.

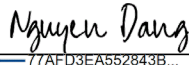
In conclusion, we find no basis for waiving the underpayment of estimated tax penalty.

HOLDING

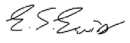
Appellants have not established that waiver of the underpayment of estimated tax penalty is warranted.

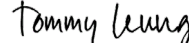
DISPOSITION

We sustain respondent’s denial of appellants’ refund claim for the 2019 tax year.

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Nguyen Dang  
Administrative Law Judge

We concur:

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Elliott Scott Ewing  
Administrative Law Judge

DocuSigned by:  
  
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Tommy Leung  
Administrative Law Judge

Date Issued: 9/8/2021