

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 21027214
M. DOUMANI AND)
P. DOUMANI)
_____)

OPINION

Representing the Parties:

For Appellants: M. Doumani and P. Doumani

For Respondent: Anne Mazur, Tax Specialist

For Office of Tax Appeals: Samuel Tari, Graduate Student Assistant

R. TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Doumani and P. Doumani (appellants) appeal an action by Franchise Tax Board (respondent) denying appellants’ claim for refund of \$7,612 for the 2019 tax year.

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

ISSUE

Whether appellants have established that they are entitled to abatement of the estimated tax penalty.

FACTUAL FINDINGS

1. On January 15, 2020, appellants submitted a 2019 fourth quarter estimated tax payment of \$194,000 using respondent’s Web Pay application. Appellants received a notification via Web Pay that their payment had been processed.
2. However, appellants entered an incorrect bank account number that their bank did not recognize, and as a result, the bank dishonored the 2019 fourth quarter estimated tax payment.

3. On September 8, 2020, appellants filed a timely joint California resident income tax return for the 2019 taxable year.
4. Upon processing the return, respondent found in its records that appellants made insufficient payments to cover their tax liability, and had an underpayment amount of \$118,505.
5. On September 16, 2020, respondent mailed appellants a Notice of Tax Return Change-Revised Balance, showing an estimated tax penalty of \$7,612, and applicable interest.¹
6. Appellants contacted their financial institution on September 22, 2020. The financial institution informed appellants that it did not remit payment to respondent due to the invalid account number because it could not identify the appropriate bank account.
7. Appellants paid the balance due on September 22, 2020. Appellants submitted FTB Form 2917, Reasonable Cause – Individual and Fiduciary Claim for Refund, (Form 2917) claiming a refund of all penalties and interest for the 2019 tax year on October 5, 2020.
8. Respondent denied the refund, and appellants filed this timely appeal.²

DISCUSSION

Issue: Whether appellants have established that the estimated tax penalty should be abated.

Except as otherwise provided, R&TC section 19136 conforms to Internal Revenue Code (IRC) section 6654, which imposes an estimated tax penalty for failure to make timely estimated tax payments. (R&TC, § 19136(a).) 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.) It is undisputed that appellants underpaid their estimated tax for the 2019 tax year. Consequently, we find that respondent properly imposed the estimated tax penalty.

There is no general reasonable cause exception to the imposition of the addition to tax for the underpayment of the estimated tax. (*Appeal of Johnson*, 2018-OTA-119P.) However, IRC section 6654(e)(3) provides exceptions to the imposition of the addition to the tax. As relevant

¹ Respondent's notice also showed a balance due for other items, including additional tax and the late payment penalty, which are not at issue in this appeal.

² Appellants requested a refund of the estimated tax penalty, the late payment penalty, and interest. However, appellants' appeal lists the amount at issue as only the amount of the estimated tax penalty. Therefore, this appeal is limited as such.

to this appeal,³ under IRC section 6654(e)(3)(A), no addition to tax is imposed if the IRS 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.” The phrase “casualty, disaster, or other unusual circumstances” generally refers to unexpected events that cause *hardship or loss* such that, due to the circumstances, it would be inequitable to impose the estimated tax penalty. (*Appeal of Johnson, supra.*) 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.*)

Here, appellants argue that reasonable cause existed and attribute the failed payment to a “mix up at the bank.” Appellants assert that their bank did not process the attempted payment and did not notify appellants of any issue with their tax payment. However, appellants also provide evidence to show that the “mix up” occurred because appellants entered an incorrect bank account number with their attempted payment, and appellants also concede that they failed to verify whether payment was actually made.

Appellants’ arguments are unavailing. Appellants’ failure to make a timely payment and the bank’s lack of notice to appellants is not a basis to abate the estimated tax penalty. A typographical error does not qualify as a “casualty, disaster, or other unusual circumstance,” and we find no other basis in the record to abate the penalty.

Appellants also request abatement of the estimated tax penalty due to their good compliance history. However, OTA is not authorized under the law to abate penalties based on past good compliance history. (See *Appeal of Xie, 2018-OTA- 076P.*)

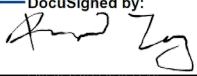
³ A second exception is found in IRC section 6654(e)(3)(B), which states that the IRS will not impose the estimated tax penalty if (i) during the applicable tax year or the preceding tax year, the taxpayer either retired after attaining the age of 62, or became disabled, and (ii) the underpayment was due to reasonable cause and not willful neglect. Appellants do not assert, nor is there any evidence, that they meet the requirements of this second exception. Thus, we do not discuss it further.

HOLDING

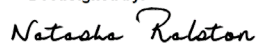
Appellants have not established that they are entitled to abatement of the estimated tax penalty.


DISPOSITION

Respondent’s action is sustained.

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Richard Tay
Administrative Law Judge

We concur:

DocuSigned by:

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Natasha Ralston
Administrative Law Judge

DocuSigned by:

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John O. Johnson
Administrative Law Judge

Date Issued: 12/9/2021