

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**C. LEUPOLD**

) OTA Case No. 21078144  
)  
)  
)  
)  
)

**OPINION**

Representing the Parties:

For Appellant: John C. Dahlin, CPA

For Respondent: Noel Garcia, Tax Counsel

C. AKIN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, C. Leupold (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$10,490, plus applicable interest, for the 2019 tax year.<sup>1</sup>

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

**ISSUE**

Whether appellant has established a basis for the reduction of the underpayment of estimated tax penalty (estimated tax penalty).

**FACTUAL FINDINGS**

1. Appellant timely filed a 2019 California Resident Income Tax Return on July 24, 2020, reporting total tax of \$1,374,949, income tax withheld of \$190,139, estimated tax and other payments of \$1,303,515, and overpaid tax of \$118,705 which appellant requested to have applied to his 2020 tax year.

---

<sup>1</sup> While FTB issued a claim denial for the full underpayment of estimated tax penalty assessed for the 2019 tax year in the amount of \$10,490, on appeal, appellant indicates that he only disagrees with “FTB’s decision not to partially waive the penalty of \$10,490 down to \$6,305.21 . . . .” Thus, the amount at issue in this appeal is the \$4,185 reduction to the penalty sought by appellant and denied by FTB.

2. At the time the return was filed, FTB's records indicated that following payments had been made and applied to appellant's 2019 tax year: \$203,515 transferred from appellant's 2018 tax year applied on April 15, 2019; \$190,139 tax withheld during 2019; and a \$981,295 extension payment made on July 14, 2020.
3. FTB accepted appellant's return as filed, and on November 19, 2020, issued a Notice of Tax Return Change – Revised Balance revising appellant's reported payments from \$1,493,654 (as reported by appellant) to \$1,374,949 (as reflect per FTB's records).<sup>2</sup> This resulted in \$0 remaining overpayment to be applied to appellant's 2020 tax year. The notice also imposed an estimated tax penalty of \$10,490, plus applicable interest, resulting in a balance due of \$10,608.16.
4. Appellant paid the balance due on February 17, 2021, and filed a claim for refund on March 30, 2021, seeking a refund of the \$10,490 estimated tax penalty imposed by FTB.
5. FTB denied appellant's refund claim and this timely appeal followed.
6. On appeal, appellant provides California Form 5805, Underpayment of Estimated Tax by Individuals and Fiduciaries, computing an estimated tax penalty of \$6,305 using the annualized installment method. Appellant's computation reports a single required estimated tax installment of \$1,237,454<sup>3</sup> due for the fourth installment period ending on January 15, 2020. Appellant's computation then reports estimated tax installment payments totaling \$730,266, resulting in an estimated tax underpayment of \$507,188 for the fourth installment period ending on January 15, 2020.
7. On appeal, FTB provides a proforma estimated tax penalty computation computing an estimated tax penalty of \$10,490 (also using the annualized installment method). FTB's computation similarly reports a single required estimated tax installment of \$1,237,454 due for the fourth installment period ending on January 15, 2020. FTB's computation then reports estimated tax installment payments totaling \$393,654, resulting in an estimated tax underpayment of \$843,800 for the fourth installment period ending on January 15, 2020.

---

<sup>2</sup> This revised amount is equal to the \$190,139 income tax withholding during the 2019 tax year, plus the \$203,515 transferred from appellant's 2018 tax year applied on April 15, 2019, plus the \$981,295 extension payment made on July 14, 2020.

<sup>3</sup> This amount is equal to 90 percent of the \$1,374,949 total tax appellant reported on his California income tax return.

## 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. Subject to certain exceptions not relevant to the issue on appeal, R&TC section 19136 incorporates IRC section 6654.<sup>4</sup> Generally, to avoid this penalty, IRC section 6654(d)(1)(B) defines the required annual payment of estimated tax as the lesser of (i) 90 percent of the tax shown on the current year return (current year safe harbor rule), or (ii) 100 percent of the tax shown on the prior year return (prior year safe harbor rule). However, for California purposes, the prior year safe harbor rule in IRC section 6654(d)(1)(B)(ii) does not apply if the taxpayer's adjusted gross income (AGI) for the current tax year is equal to or greater than \$1 million. (R&TC, § 19136.3.)

Because appellant's AGI for the current 2019 tax year is greater than \$1 million, the prior year safe harbor rule does not apply, and appellant can only avoid imposition of the estimated tax penalty if appellant made timely estimated tax payments of at least 90 percent of the tax show on the current year return. Appellant reported total tax for the 2019 tax year of \$1,374,949. Thus, to avoid the penalty, appellant needed to make timely estimated tax installment payments totaling \$1,237,454 (i.e., 90 percent of \$1,374,949). However, the record indicates that FTB only received two timely payments of estimated tax totaling \$393,654: the \$203,515 transferred from appellant's 2018 tax year and applied to the 2019 tax year effective April 15, 2019, and the \$190,139 tax withheld during the 2019 tax year. Appellant's remaining tax payment of \$981,295 made on July 14, 2020, was not made during the applicable installment period. (See R&TC, § 19136.1(a)(2); IRC, § 6654(c).) Thus, FTB properly imposed an estimated tax penalty.

---

<sup>4</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. (See also IRC § 6654(c)(2) [which requires a fourth installment payment on September 15 of the applicable tax year for federal income tax purposes].)

Appellant does not appear to contest the general imposition of the estimated tax penalty. Instead, on appeal, appellant asserts only that the amount of the penalty should be reduced from \$10,490 as computed and assessed by FTB, to \$6,305 as computed by appellant using the annualized installment method pursuant to IRC section 6654(d)(2).<sup>5</sup> The annualized installment method is generally available to taxpayers with fluctuating income during the tax year and alters the applicable percentage or amount of estimated payments due during each of the required installment dates.<sup>6</sup> (See IRC, § 6654(d)(2).) Taxpayers wishing to use the annualized installment method are required to compute the amount of estimated tax installment payments required under that method on Form 5805 and attach this form to their return when filed.<sup>7</sup>

On appeal, both appellant and FTB provide computations of the applicable estimated tax penalty based on the annualized installment method.<sup>8</sup> FTB's and appellant's estimated tax penalty computations are essentially identical, with one exception: the amount of estimated tax installment payments reported as made during the installment period for the 2019 tax year. Appellant reports estimated tax installment payments totaling \$730,266, while FTB uses estimated tax installment payments totaling \$393,654 in its computations of the estimated tax penalty.

When FTB imposes a penalty, the law presumes that FTB properly imposed the penalty. (*Appeal of Xie*, 2018-OTA-076P.) FTB's computation, which reflects total estimated tax

---

<sup>5</sup> Appellant initially requested a full abatement of the estimated tax penalty in his claim for refund filed with FTB based on reasonable cause type arguments. However, on appeal, appellant appears to abandon his request for full abatement of the penalty and instead argues only that the penalty should be reduced from \$10,490 down to \$6,305 based on the computation appellant provided. To the extent appellant intends to continue to assert that the estimate tax penalty should be abated in its entirety based on reasonable cause type arguments, we note that there is no general reasonable cause exception to the estimated tax penalty. (*Appeal of Scanlon*, 2018-OTA-075P.)

<sup>6</sup> Absent application of the annualized installment method under IRC section 6654(d)(2), R&TC section 19136.1(a)(2) generally requires installments of 30 percent on or before April 15 of the applicable year, 40 percent on or before June 15 of the applicable year, 0 percent on or before September 15 of the applicable year, and 30 percent on or before January 15 of the immediately succeeding tax year.

<sup>7</sup> Appellant properly attached Form 5805 to his 2019 California income tax return calculating the estimate tax installment payments required under the annualized installment method; however, appellant computed the penalty as \$0 and did not self-assess any estimated tax penalty on Form 5805 attached to his return or on his return filed for the 2019 tax year.

<sup>8</sup> Both appellant's and FTB's computations reflect a single estimated tax installment payment of \$1,237,454 as being due for the fourth installment period ending on January 15, 2020. Absent application of the annualized installment method under IRC section 6654(d)(2), 30 percent of this amount (i.e., \$371,236.20) would have been due on April 15, 2019, 40 percent (i.e., \$494,981.60) would have been due on June 15, 2019, 0 percent (i.e., \$0) would have been due on September 15, 2019, and 30 percent (i.e., \$371,236.20) would have been due on or before January 15, 2020. (See R&TC, § 19136.1(a)(2); IRC, § 6654(c).)

installment payments of \$393,654, gives appellant proper credit for his timely payments of estimated tax for the 2019 tax year: the \$203,515 transferred from appellant's 2018 tax year and the withholding of \$190,139. Appellant's computation, on the other hand, reflects \$336,612 (\$730,266 minus \$203,515 and \$190,139) of additional estimated tax installment payments which are not reflected in the appeal record. Appellant has failed to substantiate these additional claimed estimated tax payments. FTB has provided appellant with both its computation of the estimated tax penalty (using the annualized installment method as requested by appellant) and its record of the payments applied to appellant's 2019 tax year with its opening brief. Appellant, after being provided with this information, has not provided any additional evidence or argument to substantiate the additional estimated tax payments appellant seeks to apply in his computation of the estimated tax penalty.

The burden of proof is upon appellant as to all issues of fact. (Cal. Code of Regs., tit. 18, § 30219(a).) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) Because appellant has failed to substantiate any additional timely payments of estimated tax, appellant has not met his burden of proof and has failed to establish error in FTB's imposition or computation of the estimated tax penalty.

HOLDING

Appellant has not established a basis for the reduction of the estimated tax penalty.

DISPOSITION

FTB’s denial of appellant’s claim for refund for the 2019 tax year is sustained.

DocuSigned by:  
  
Cheryl L. Akin  
Administrative Law Judge

We concur:

DocuSigned by:  
  
Amanda Vassigh  
Administrative Law Judge

DocuSigned by:  
  
Keith Long  
Administrative Law Judge

Date Issued: 1/14/2022