

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
M. HALLINAN) OTA Case No. 22029767
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OPINION

Representing the Parties:

For Appellant: M. Hallinan

For Respondent: Alisa L. Pinarbasi, Tax Counsel

For Office of Tax Appeals: Kyu Bin Kang, Graduate Student Assistant

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Hallinan (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$2,760, consisting of an underpayment of estimated tax penalty (estimated tax penalty) for the 2020 taxable year.

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.1.) Appellant waived the right to an oral hearing; therefore, the Office of Tax Appeals (OTA) decides the matter based on the written record.

ISSUE

Has appellant established a basis to abate the estimated tax penalty for the 2020 taxable year?

FACTUAL FINDINGS

1. Appellant and his spouse timely filed a joint 2020 California Resident Income Tax Return, reporting a tax due of \$128,189.¹ The joint return reflected a self-assessed

¹ Appellant and his spouse filed a joint 2020 California Resident Income Tax Return; however, only appellant filed an appeal of FTB’s denial of the claim for refund. As a result, this appeal is in appellant’s name only.

- estimated tax penalty of \$1,337, resulting in a total amount due of \$129,526, which appellant paid.
2. On July 8, 2021, FTB informed appellant of an outstanding balance due of \$3,073.54 by a Notice of Tax Return Change – Revised Balance. Specifically, FTB did not receive an estimated tax payment of \$1,644.00, which appellant and his spouse had reported on their joint return, and FTB imposed an estimated tax penalty of \$2,760.00 rather than the self-assessed amount of \$1,337.00.²
 3. Appellant paid the balance due and filed a claim for refund requesting abatement of the estimated tax penalty based on reasonable cause.
 4. FTB denied the claim for refund, and appellant timely filed this appeal.

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.)

There is no provision in the R&TC or IRC allowing the estimated tax penalty to be abated based solely on a finding of reasonable cause. (*Appeal of Saltzman*, *supra*.) As a result, there is no general reasonable cause exception to the imposition of the estimated tax penalty, and the penalty is mandatory unless the taxpayer establishes a statutory exception applies. (*Ibid*.) One such exception provides that the taxing agency may waive the estimated tax penalty if it 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).)³

Appellant does not dispute the applicability of the estimated tax penalty for the 2020 taxable year. In fact, appellant self-assessed an estimated tax penalty on the 2020 tax return.

² The total tax due after those adjustments includes credit for payment of the self-assessed estimated tax penalty amount of \$1,337.

³ The second exception, in IRC section 6654(e)(3)(B) provides that the estimate penalty will not apply if, during the taxable year or the preceding year, the taxpayer either retired after attaining the age of 62 or became disabled, and the underpayment was due to reasonable cause and not willful neglect. Neither appellant nor his spouse had obtained the age of 62 during or prior to taxable year 2020, nor has appellant alleged that either he or his spouse were disabled in taxable years 2019 or 2020. Thus, this exception does not apply.

FTB subsequently adjusted the estimated tax penalty amount to \$2,760. The only issue on appeal is whether appellant has established a basis to abate the estimated tax penalty for the 2020 taxable year.

Appellant argues that the estimated tax penalty should be abated based on reasonable cause. Appellant's refund claim states that he consulted FTB's website on more than one occasion and found no indication that qualified small business stock (QSBS) is taxed differently under California tax law than it is under federal law, and that it was not "reasonable to [expect him] to understand that FTB does not abide by Federal IRS Tax Code rules for QSBS." However, while appellant alleges that he found no FTB guidance on FTB's website, California's 2020 Schedule D Instructions for Form 540 specifically provides that "California does not conform to the [QSBS] deferral and gain exclusion under IRC section 1045 and IRC section 1202."⁴ Appellant further states that he did not know about the difference until he consulted a CPA in spring of 2021, after the deadlines for payment of estimated tax had passed for taxable year 2020. Even if it were reasonable for appellant to have misinterpreted California tax law applicable to QSBS, the applicable statutes do not permit abatement of the estimated tax penalty based solely on reasonable cause.

Appellant has not shown that any statutory exception applies that would allow OTA to abate the estimated tax penalty. Appellant did not submit any evidence of casualty, disaster, or other unusual circumstances that prevented him from making the estimated tax payments for the 2020 taxable year. Based on the foregoing, OTA concludes that appellant has not met his burden of proof.

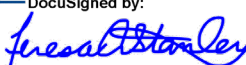
⁴ See <https://www.ftb.ca.gov/forms/2020/2020-540-d-instructions.html>.

HOLDING

Appellant has not established a basis to abate the estimated tax penalty for the 2020 taxable year.

DISPOSITION

FTB's action is sustained.

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Teresa A. Stanley
Administrative Law Judge

Date Issued: 8/10/2022