

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

V. WANG

) OTA Case No. 21027229
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OPINION

Representing the Parties:

For Appellant:

V. Wang¹

For Respondent:

James Filling, Legal Intern
Jason Riley, Tax Counsel IV
Ellen Swain, Tax Counsel IV

A. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, V. Wang (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$1,577 for the 2019 tax year.

Office of Tax Appeals Administrative Law Judges Richard Tay, Kenneth Gast, and Andrea L.H. Long held an electronic oral hearing for this matter on July 27, 2022. At the conclusion of the hearing, the record was closed and this matter was submitted for a decision.

ISSUE

Whether appellant is entitled to an abatement of the estimated tax penalty.

FACTUAL FINDINGS

1. Appellant held stock in Celgene Corporation. On November 19, 2019, Bristol-Myers Squibb Company purchased Celgene Corporation through a merger acquisition, which resulted in appellant, a stockholder in Celgene Corporation, realizing capital gain of over \$1 million in the fourth quarter of 2019. Appellant did not make a required estimated tax payment for the fourth quarter of 2019, which was due on January 15, 2020.

¹ Appellant filed his opening brief. Robert Davydov of the Tax Appeals Assistance Program filed appellant’s reply brief. Thereafter, appellant represented himself again.

2. On July 14, 2020, appellant made an electronic payment of \$153,000.
3. On October 15, 2020, appellant filed a 2019 California tax return and attached Form 5805, *Underpayment of Estimated Tax by Individuals and Fiduciaries*. Appellant calculated his 2019 fourth quarter installment payment as \$126,848 and fourth quarter estimated tax penalty as \$1,576.94. Respondent applied a portion of appellant's July 14, 2020 electronic payment in satisfaction of the 2019 fourth quarter installment payment and the fourth quarter estimated tax penalty.
4. Appellant filed a claim for refund with respondent, which respondent denied.
5. This timely appeal followed.

DISCUSSION

Except as otherwise provided, R&TC section 19136 conforms to Internal Revenue Code (IRC) section 6654 and imposes a penalty for the failure to timely make estimated income tax payments at the end of the installment periods. (R&TC, § 19136(a); IRC, § 6654(a).) For California purposes, installment tax payments are due on April 15 and June 15 of the current tax year, and January 15 of the following tax year. (R&TC, § 19136.1; IRC, § 6654(c)(2).) The estimated tax penalty is similar to an interest charge and applies from the due date of the estimated tax payment until the date it is paid or April 15 following the tax year, whichever is earlier. (IRC, § 6654(b)(2); *Appeal of Johnson*, 2018-OTA-119P.) There is no general reasonable cause exception for the estimated tax penalty. (*Appeal of Johnson, supra.*)

There is no dispute that appellant did not timely make an estimated tax payment for the fourth quarter of 2019. Instead, appellant contends that the merger between Celgene Corporation and Bristol-Myers Squibb Company resulted in his forced sale of stock, which generated unanticipated taxable capital gains. Appellant argues that he could not estimate his fourth quarter installment payment because the necessary financial documentation was not available to him until February 11, 2020, which was after the January 15, 2020 due date for the estimated tax payment at issue.

IRC section 6654(e)(3)(A) provides a limited exception to the imposition of the estimated tax penalty if, by reason of casualty, disaster, or other unusual circumstances, imposing the penalty would be against equity and good conscience. The phrase “casualty, disaster, or other unusual circumstances” generally refers to unexpected events that cause a hardship or loss such that, due to the circumstances, it would be inequitable to impose the estimated tax penalty.

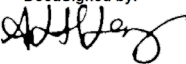
(*Appeal of Johnson, supra.*) A large financial gain is not the type of unexpected event qualifying for relief. (*Ibid.*) The estimated tax penalty has been waived by the IRS in situations “where a tax law change, disaster, required accounting method change, or a Government action or inaction caused extreme difficulty in estimating the tax.” (*Appeal of Mazdyasni, 2018-OTA-049P.*) However, a financial transaction resulting in taxable gain, no matter how complex, is not an unusual circumstance warranting penalty abatement. (*Ibid.*) In addition, difficulty in estimating the tax is not an unusual circumstance for purposes of abating the estimated tax penalty within the meaning of IRC section 6654(e). (*Ibid.*) Thus, there is no basis to abate the estimated tax penalty under IRC section 6654(e)(3)(A).²

HOLDING

Appellant is not entitled to an abatement of the estimated tax penalty.

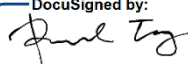
DISPOSITION

Respondent’s action denying the claim for refund is sustained.

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 Andrea L.H. Long
 Administrative Law Judge

We concur:

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 Richard Tay
 Administrative Law Judge

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 Kenneth Gast
 Administrative Law Judge

Date Issued: 9/29/2022

² IRC section 6654(e)(3)(B) also provides for the waiver of the penalty if the underpayment was due to reasonable cause and not to willful neglect, but only for individuals who retired after attaining the age of 62, or who became disabled, in the tax year for which estimated payments were required to be made (here, 2019) or in the tax year preceding such tax year (here, 2018). Appellant does not contend, and the record does not indicate, that either exception applies. In addition, appellant testified that he retired prior to 2018.