

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
M. MANTAI)
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OTA Case No. 21119168

OPINION

Representing the Parties:

For Appellant: M. Mantai

For Respondent: Christopher M. Cook, Tax Counsel
Eric Yadao, Tax Counsel IV

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Mantai (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$5,288¹ for the 2019 tax year.²

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.)

Office of Tax Appeals (OTA) Administrative Law Judge Asaf Kletter held an electronic oral hearing for this matter on September 27, 2022. At the conclusion of the hearing, the record was closed and this matter was submitted for an opinion.

ISSUE

Whether appellant has established grounds to abate the underpayment of estimated tax penalty (estimated tax penalty) for the 2019 tax year.³

¹ FTB denied appellant’s claim for refund in the amount of \$3,233, which represents the underpayment of estimated tax penalty that appellant contests. Appellant claimed a refund of \$5,288, asserting he made larger prepayments of tax. FTB did not respond to this claim. On appeal, appellant only contests the underpayment of estimated tax penalty.

² Although appellant filed a joint 2019 California income tax return, his spouse did not join this appeal.

³ The parties agreed that the estimated tax penalty is the sole issue on appeal.

FACTUAL FINDINGS

1. Appellant and his spouse timely filed a joint California Resident Income Tax Return for the 2019 tax year. The tax return reported a California adjusted gross income (AGI) of over one million dollars, tax due of \$99,212, estimated tax and extension payments totaling \$109,000, and requested that the difference be credited to the 2020 tax year.
2. FTB processed the tax return and issued a Notice of Tax Return Change – Revised Balance (Notice), reducing total tax payments to \$99,212 to reflect its payment records. Accordingly, FTB reduced to zero appellant’s claimed overpayment to 2020. Because only one estimated tax payment was made in the amount of \$4,500, and no other estimated tax installments were made, FTB also imposed an estimated tax penalty of \$3,233.⁴
3. Appellant responded to the Notice, arguing that the estimated tax penalty should not be imposed but nonetheless paid the penalty. FTB treated appellant’s response as a claim for refund.
4. By letter dated September 29, 2021, FTB denied the refund claim.
5. Appellant filed this timely appeal.

DISCUSSION

Subject to certain exceptions not relevant to this appeal, R&TC section 19136 incorporates Internal Revenue Code (IRC) section 6654, but modifies the due dates and amounts for payment of estimated taxes. IRC section 6654 imposes an estimated tax penalty when an individual fails to timely pay estimated tax. The estimated tax penalty is like an interest charge in that it is calculated by applying the interest rate imposed on the amount of underpaid estimated tax. (See IRC, § 6654(a) [calculating estimated tax penalty by reference to interest rate imposed on underpayments]; R&TC, § 19136(b) [referring to R&TC section 19521 which, with modification, conforms to federal interest provisions in IRC § 6621]; *Appeal of Johnson*, 2018-OTA-119P.) R&TC section 19136.3 provides that in the case of an individual filing jointly with his or her spouse and reporting an AGI of one million dollars or more, the required annual

⁴ Appellant made an extension payment which satisfied his remaining tax liability.

payment is 90 percent of the tax shown on the return for the taxable year.⁵ (R&TC, § 19136.3(a); IRC, § 6654(d)(1)(B); *Appeal of Mazdyasni*, 2018-OTA-049P.) An individual with uneven income during the year may use an annualized income installment method in lieu of making four equal payments. (R&TC, § 19136.1; IRC, § 6654(d).)⁶

No provision in the IRC or R&TC allows the estimated tax penalty to be abated solely on a finding of reasonable cause, and therefore, the estimated tax penalty under IRC section 6654 is mandatory unless the taxpayer establishes that a statutory exception applies. (*Appeal of Johnson, supra.*) However, IRC section 6654(e)(3)(A) provides that FTB 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.”⁷ (*Ibid.*)

On appeal, appellant alleges that he had no means to know that AGI on his joint return would exceed one million dollars. Difficulty in estimating the tax for the tax year is not an unusual circumstance for purposes of penalty abatement under IRC section 6654(e). (*Appeal of Mazdyasni, supra.*) Nor is an unprecedented increase to income an unusual circumstance under IRC section 6654(e). (*Appeal of Johnson, supra.*) Further, imposing an interest charge on tax due does not offend “equity and good conscience.” (*Appeal of Saltzman*, 2019-OTA-070P.) OTA finds that appellant does not have unusual circumstances that qualify for abatement of the estimated tax penalty under IRC section 6654(e). As there is no general reasonable cause exception, acting reasonably based on the available information does not permit abatement of the estimated tax penalty. (*Ibid.*) Thus, OTA has no basis to abate the estimated tax penalty based on appellant’s reasonable cause-type argument.

⁵ As relevant, California does not fully conform to the federal safe harbor in IRC section 6654(d)(1)(B)(ii), for taxpayers making a required annual payment of 110 percent of the tax shown on the return for the prior year. R&TC section 19136.3 provides that for tax years beginning on or after January 1, 2009, the federal safe harbor in IRC section 6654(d)(1)(B)(ii) does not apply to individuals reporting a California AGI of one million dollars or more. The California AGI threshold is \$500,000 in the case of a married individual filing a separate return. (R&TC, § 19136.3(a).) Appellant and his spouse’s joint tax return reported a California AGI of over one million dollars; thus, the safe harbor does not apply to appellant.

⁶ Appellant did not elect to use this method.

⁷ IRC section 6654(e)(3)(B) provides another ground for waiver of the estimated tax penalty where the taxing agency determines that the failure to timely pay the estimated tax payment was due to reasonable cause, and the taxpayer retired after reaching age 62 or became disabled in the taxable year for which the estimated payments were required to be made or in the previous year. As there is no evidence or argument that this exception is applicable, OTA does not discuss it further.


Appellant further claims that he reasonably followed instructions to Form 540-ES, Estimated Tax for Individuals, and that he should not be penalized for following unclear instructions. However, taxpayers may only rely on authoritative sources of law, which are the statutes, regulations, and judicial decisions, not informal publications issued by the tax agency. (*Appeal of Dandridge*, 2019-OTA-458P.) Appellant estimated his income by reference to his taxable income for the prior tax year. However, IRC section 6654(d)(2)(B)(i), to which California conforms, determines the estimated tax penalty by reference to “the tax for the taxable year computed by placing on an annualized basis the taxable income, alternative minimum taxable income, and adjusted self-employment income for months in the taxable year” preceding the due date. Thus, the applicable statute determines the estimated tax penalty by reference to the actual taxable income for the months preceding the due date, rather than by reference to such taxable income as can be reasonably estimated. (*Appeal of Saltzman*, *supra*.) OTA has no basis to change the statutory method for calculating the estimated tax penalty.

HOLDING

Appellant has not established grounds to abate the underpayment of estimated tax penalty for the 2019 tax year.

DISPOSITION

FTB’s action in denying appellant’s claim for refund is sustained.

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Asaf Kletter
Administrative Law Judge

Date Issued: 10/19/2022