

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 22029672  
R. ROWDEN AND )  
C. ROWDEN )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: Blake Rochette, Representative

For Respondent: Christopher M. Cook, Tax Counsel III

O. AKOPCHIKYAN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R. Rowden and C. Rowden (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$1,625 for the 2020 tax year.

Appellants waived the right to an oral hearing; therefore, the Office of Tax Appeals (OTA) decides this matter based on the written record.

**ISSUE**

Whether appellants have established a basis to abate the estimated tax penalty.

**FACTUAL FINDINGS**

1. Appellants timely filed their 2020 California tax return, reporting taxable income of \$938,195, total tax due of \$86,847, and payments of \$69,924. Appellants reported and paid an estimated tax penalty of \$918 with their return.
2. After processing the return, FTB notified appellants that the correct estimated tax penalty was \$1,625.
3. Appellants paid the revised estimated tax penalty and filed a claim for refund.
4. FTB denied the refund claim and this timely appeal followed.

## DISCUSSION

California conforms to Internal Revenue Code (IRC) section 6654 and imposes an estimated tax penalty for the failure to timely make estimated income tax payments. (R&TC, § 19136(a); IRC, § 6654.) 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. (IRC, § 6654(b)(2).)

Appellants do not protest the imposition or computation of the estimated tax penalty. Appellants instead argue that the penalty should be abated based on reasonable cause or under a first-time abatement theory. With respect to reasonable cause, appellants assert that they underpaid their estimated taxes based on their tax professional's expectation that California would pass legislation treating forgiven Paycheck Protection Program (PPP) loans as excludable from gross income. Appellants contend they paid their tax as soon as it became evident that California would not pass such legislation. While OTA is sympathetic to appellants' situation, there is no general reasonable cause abatement of an estimated tax penalty. (*Appeal of Scanlon*, 2018-OTA-075P.)

Although there is no general reasonable cause abatement available for this penalty, IRC section 6654(e)(3) provides two avenues upon which the penalty may be waived. First, under IRC section 6654(e)(3)(A), the penalty may be waived if it is determined that, "by reason of casualty, disaster, or other unusual circumstances the imposition of such addition to tax would be against equity and good conscience." OTA finds that appellants' tax professional's expectation that California might pass legislation excluding forgiven PPP loans from income does not constitute a "casualty, disaster, or other unusual circumstance" under IRC section 6654(e)(3)(A). (*Appeal of Mazdyasni*, 2018-OTA-049P.)

Second, under IRC section 6654(e)(3)(B), the penalty may be waived if it is determined that (1) during the applicable tax year or the preceding year, the taxpayer either retired after having attained age 62, or became disabled, and (2) the underpayment was due to reasonable cause and not due to willful neglect. Thus, the issue of whether a taxpayer had reasonable cause for underpaying estimated tax only arises if, during the applicable tax year or the preceding year, the taxpayer either retired after having attained age 62, or became disabled. (*Appeal of Johnson*, 2018-OTA-119P.) The record does not establish that appellants retired after having attained age 62 or became disabled in 2019 or 2020. Therefore, there is no basis to find that appellants qualify for waiver under IRC section 6654(e)(3)(B).

With respect to first-time abatement, although R&TC section 19132.5 authorizes first-time abatement of certain penalties for certain filers, that section only applies to tax years starting on and after January 1, 2022, and, more importantly, does not apply to estimated tax penalties.

Therefore, OTA finds no legal basis to abate the estimated tax penalty.

HOLDING

Appellants have not established a basis to abate the estimated tax penalty.

DISPOSITION

FTB’s action is sustained in full.

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Ovsep Akopchikyan  
Administrative Law Judge

We concur:

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*Josh Aldrich*  
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Josh Aldrich  
Administrative Law Judge

DocuSigned by:  
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Josh Lambert  
Administrative Law Judge

Date Issued: 6/20/2023