



3. On September 15, 2018, appellants filed an Amended Individual Income Tax Return (Form 540X) for the 2015 tax year. Appellants reduced their claimed taxable income by \$1,618,819, and claimed a refund of \$215,279.
4. On March 8, 2022, FTB issued a Notice of Action on an Overassessment, Credit, or Refund, and issued a refund of \$191,371.39 to appellants.
5. Appellants timely filed this appeal, requesting abatement of the estimated tax penalty of \$18,588.21.

### DISCUSSION

California generally conforms to Internal Revenue Code (IRC) section 6654, which imposes an addition to tax, which is treated as a penalty, where an individual fails to timely pay estimated tax. (R&TC, § 19136(a).) The estimated tax penalty is similar to an interest charge in that it is calculated by applying the applicable interest rate from the due date of the estimated tax payment until the date it is paid. (See IRC, § 6654(a); R&TC, § 19136(b).) Under R&TC section 19136, taxpayers who received income not subject to withholding are required to make payments of the estimated amount of their tax. Generally, the required annual payment is the lesser of 90 percent of the tax shown on the current year or 100 percent of the tax shown on the prior year return. (IRC, § 6654(d)(1)(B).) However, R&TC section 19136.3 provides that in the case of an individual reporting adjusted gross income equal to or greater than \$1 million, as is the case here, the required annual payment is 90 percent of the tax shown on the return for the taxable year. (R&TC, § 19136.3(a); IRC, § 6654(d)(1)(B).) As relevant to the tax year at issue, R&TC section 19136.1(a)(2) generally requires, for California income tax purposes, that the payments be made in installments on or prior to April 15, June 15, and September 15 of the applicable tax year, and January 15 of the subsequent tax year. California requires that the first required installment is 30 percent of the required annual payment; the second required installment is 40 percent of the required annual payment; the third required installment is zero; and the fourth required installment is 30 percent of the required annual payment. (R&TC, § 19136.1(a)(2).)

The estimated tax penalty is mandatory unless the taxpayer establishes that an exception applies. (*Appeal of Saltzman*, 2019-OTA-070P; *Appeal of Johnson*, 2018-OTA-119P.) A statutory exception can be found in IRC section 6654(e)(3)(A), which 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.”<sup>1</sup>

Appellants acknowledge that, as stated in *Appeal of Johnson, supra*, “[t]here is no provision in the IRC or R&TC that allows the addition to tax for the underpayment of estimated tax to be abated based solely on a finding of reasonable cause.” Appellants argue, however, that the word “solely” in conjunction with the “other unusual circumstances” language in IRC section 6654(e)(3)(A) suggests that there is judicial discretion to consider reasonable cause if there is other evidence in support of abatement. In support, appellants explain that the income that led to the underpayment of estimated tax stems from business dealings with an equity firm, which began in July of 2014. Appellants assert that in June of 2015, they entered a letter of intent with the equity firm. Later that summer, appellants assert that they received notice from the equity firm that it had not raised the necessary money, and that unless the equity firm found another investor the transaction would not occur. Appellants also assert that after the equity firm found another investor, the transaction occurred on November 12, 2015. Appellants argue that because the transaction was uncertain to close until November 2015, and because they only had use of the money for 49 days in 2015, the estimated tax penalty should be abated based on judicial discretion described above.

Here, the phrase “unusual circumstances” generally refers to items that are similar to a “casualty” or “disaster”—that is, 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 Johnson, supra*.) A large financial gain is generally not the type of unexpected event qualifying for relief. (*Ibid.*) Instead, 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.*) Here, appellants have failed to provide any evidence establishing that the sale of their 2015 transaction constituted an “unusual circumstance” that made it extremely difficult to estimate their tax by the fourth installment date. Indeed, despite OTA’s request, appellants have not provided any documents related to the transaction, such as a copy of the letter of intent, or

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<sup>1</sup> Another exception can be found in IRC section 6654(e)(3)(B), which provides a waiver of the penalty where the taxing agency determines that (i) during the applicable tax year or the preceding year, the taxpayer either retired after having attained age 62, or became disabled, and (ii) the underpayment was due to “reasonable cause” and not due to willful neglect. Here, however, there is no evidence or argument that this exception is applicable.

evidence establishing why it was uncertain that the transaction would close in 2015. Unsupported assertions are insufficient to satisfy a taxpayer’s burden of proof. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) Appellants have also failed to establish any error in the calculation of the estimated tax penalty, which they self-assessed.

Based on the foregoing, OTA finds that appellants have not established grounds to abate the estimated tax penalty.

HOLDING

Appellants are not entitled to an abatement of the estimated tax penalty.

DISPOSITION

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

DocuSigned by:  
*Josh Aldrich*  
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Josh Aldrich  
Administrative Law Judge

We concur:

DocuSigned by:  
*Andrew Wong*  
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Andrew Wong  
Administrative Law Judge

DocuSigned by:  
*Ovsep Akopchikyan*  
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Ovsep Akopchikyan  
Administrative Law Judge

Date Issued: 6/16/2023