

FACTUAL FINDINGS

1. On April 1, 2021, appellants received an email from Hite Hedge, L.P. (Hite) estimating that appellants would realize \$0 of ordinary gain for taxable year 2020. Based on that document, appellants made an extension payment of \$391 on May 15, 2021.²
2. On June 30, 2021, appellants received another email from Hite notifying appellants they could now access their Hite Schedule K-1. The Hite Schedule K-1 reported appellants' share of ordinary income as \$158,583 for taxable year 2020.
3. On September 10, 2021, Appellants filed a timely joint California Resident Income Tax Return for taxable year 2020. The return reported federal adjusted gross income (AGI) in excess of \$150,000, total tax of \$20,760, and tax due of \$6,925, which appellants paid with interest on the filing date.
4. Appellants had withholding credits of \$2,944 and made estimated tax payments using an annualized income installment method. Appellants paid \$2,500 on July 15, 2020, \$4,000 on September 15, 2020, and \$4,000 on January 14, 2021.
5. Appellants' total tax for the prior 2019 taxable year was \$15,066.
6. FTB sent appellants a notice assessing a late-filing penalty of \$484.75 and an estimated tax penalty of \$46.00.³
7. Appellants paid the balance due including applicable interest and requested abatement of the penalties and a refund.
8. FTB denied appellants' claim for refund, and this timely appeal followed.

DISCUSSION

Issue 1: Have appellants established reasonable cause to abate the late-payment penalty?

R&TC section 19132 imposes a penalty when a taxpayer fails to pay the tax shown on a return by the original filing deadline. The late-payment penalty may be abated if the taxpayer shows that the failure to make a timely payment of tax was due to reasonable cause and was not due to willful neglect. (R&TC, § 19132(a)(1).) To establish reasonable cause for the late

² See <https://www.ftb.ca.gov/about-ftb/newsroom/2020-tax-year-extension-to-file-and-pay-individual.html> extending the deadline for certain acts required by taxpayers from April 15, 2021, to May 17, 2021.

³ Neither party submitted the notice to OTA; however, the parties agree that FTB issued it, and that the penalty amounts are correct as stated.

payment of tax, a taxpayer must show that the failure to make a timely payment of the proper amount of tax occurred despite the exercise of ordinary business care and prudence. (*Appeal of Moren*, 2019-OTA-176P.) A taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid.*) Asserted lack of documentation or difficulty in calculating a tax liability does not, by itself, constitute reasonable cause for a late payment of tax. (*Ibid.*)

Appellants request abatement of the late-payment penalty based on reasonable cause. Appellants assert that they estimated their tax payments based on an initial email from Hite that indicated appellants would not have ordinary gain for 2020. Appellants contend that based on this information, they made an extension payment of \$391 in good faith. Appellants further assert that they did not receive a Schedule K-1 reporting their Hite ordinary income of \$158,583 until June 30, 2021. Appellants contend that they exercised ordinary business care and prudence by paying what they believed would be their required tax due, and that their tax return filing was delayed because Hite sent another final K-1 on August 31, 2021.

Appellants did pay most of their tax due via estimated payments, plus an extension payment, that accounted for all income other than their Hite pass-through income. On the other hand, appellants have not established what steps they took to try to get the information they needed from Hite to accurately determine their 2020 tax liability prior to the payment due date of May 17, 2021. FTB asserts that appellants did nothing to ascertain their Hite income; that they made no attempts to contact Hite to obtain tax information but relied instead upon the initial email received from Hite.

Unlike the appellant in *Appeal of Moren, supra*, appellants here did not take the extra steps to follow up on the April 1, 2021, email from Hite, which they knew contained only an estimate of appellants' Hite income. No evidence shows that appellants contacted Hite to inquire about the large increase in ordinary income from the first Hite email (\$0) to the issuance of the Schedule K-1 (\$158,583). Moreover, appellants appear to have relied solely on the estimated ordinary gain of \$0 when making their estimated and extension payments without taking into consideration significant capital gains and IRC section 1258 gains.⁴ With respect to appellants'

⁴ The April 1, 2021 email from Hite estimates appellants' capital gains and IRC section 1258 gains to be approximately 30 percent of their year-end capital account. The email stated that if the year-end capital account balance were \$500,000, appellants would expect \$150,000 in gains. Appellants' actual year-end capital account balance was \$616,759, which is significantly higher than the estimated \$500,000 year-end capital account balance.

assertion that they delayed filing their return until after they received a second Schedule K-1 on September 30, 2021, that did not affect their final tax, the penalty at issue is a late-payment penalty, not a late-filing penalty. Furthermore, appellants do not explain why they did not make a payment once they received the first Schedule K-1 on June 30, 2021, but instead waited to pay the remaining balance due until they filed their tax return in September 2021. Appellants took no steps to ascertain their liability prior to the payment due date of May 17, 2021, and instead chose to rely on a single email. As such, appellants have not established reasonable cause to abate the late-payment penalty.

Issue 2: Have appellants established a basis to abate the estimated tax penalty?

Subject to certain exceptions not relevant to this appeal, R&TC section 19136 incorporates Internal Revenue Code (IRC) section 6654. IRC section 6654 imposes an estimated tax penalty when an individual fails to timely pay estimated tax. The estimated tax penalty is similar to an interest charge in that it is calculated by applying the interest rate imposed on underpayments to the amount of the underpayment of estimated tax. (*Appeal of Saltzman*, 2019-OTA-070P.) There is no provision in the IRC or R&TC that allows the estimated tax penalty to be abated based solely on a finding of reasonable cause. (*Appeal of Johnson*, 2018-OTA-119P.)

IRC section 6654(d)(1)(B) provides a safe harbor such that if a taxpayer pays the lesser of 90 percent of the tax required to be shown on the return for the taxable year or 100 percent of the tax shown on the return for the preceding taxable year, the penalty will not apply. For taxpayers with AGI in excess of \$150,000, as here, the penalty will not apply if the taxpayer pays 110 percent of the tax shown on the return for the preceding taxable year. (IRC, § 6654(d)(1)(C)(i).)

Appellants' total tax for 2020 was \$20,760, and for 2019 total tax was \$15,066. Therefore, 90 percent of appellants' 2020 total tax would be \$18,684, and 110 percent of appellants' 2019 total tax would be \$16,573. In order to qualify for the safe harbor, appellants would have had to pay at least \$16,573 (the lesser of the two above amounts); however, appellants only made timely payments of \$13,835. Thus, FTB properly imposed the estimated tax penalty on the underpayment of estimated tax for the third and fourth installments.

Appellants assert that they did the best they could to estimate their taxes. Appellants assert that because their 2020 non-Hite income was significantly lower for the first two quarters of 2020 than their non-Hite income for the first two quarters of 2019, they acted reasonably and in good faith by estimating that their total income would decrease accordingly. Appellants' arguments are akin to


reasonable cause arguments. Because the statute does not provide for abatement based solely on reasonable cause, OTA has no authority to grant appellants’ request.

HOLDINGS

1. Appellants have not established reasonable cause to abate the late-payment penalty.
2. Appellants have not established a basis to abate the estimated tax penalty.

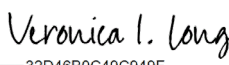
DISPOSITION

FTB’s action is sustained.


DocuSigned by:

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 Teresa A. Stanley
 Administrative Law Judge

We concur:

DocuSigned by:

 32D46B0C49C949E

 Veronica I. Long
 Administrative Law Judge

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 Michael F. Geary
 Administrative Law Judge

Date Issued: 10/16/2023