

- underpayment of estimated tax penalty (estimated tax penalty), and the remainder to a subsequent tax year.
3. FTB subsequently issued a Notice of Tax Return Change – Revised Balance, informing appellants that FTB’s records reflected estimated tax payments of \$57,207, not \$58,143 as reported by appellants, and that FTB had imposed a late-payment penalty of \$1,048.25 and an estimated tax penalty of \$89 (the same amount self-assessed by appellants).
 4. Appellants paid the balance due and filed a claim for refund, seeking abatement of the late-payment penalty and estimated tax penalty based on reasonable cause grounds. FTB denied the claim, and this timely appeal followed.

DISCUSSION

Issue 1: Whether appellants have established reasonable cause to abate the late-payment penalty.

R&TC section 19132 imposes a late-payment penalty when a taxpayer fails to pay the amount shown as due on the return by the date prescribed for the payment of the tax. Generally, the date prescribed for the payment of the tax is the due date of the return (without regard to extensions of time for filing). (R&TC, § 19001; R&TC, § 18566.) Thus, appellants’ tax payment was due by April 15, 2022, but they did not make their final tax payment until August 11, 2022. There is no dispute FTB properly imposed and computed the penalty. Rather, the only issue is whether there is reasonable cause to abate the late-payment penalty.

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.¹ (R&TC, § 19132(a)(1).) The determination of whether reasonable cause exists for the late payment requires an analysis of appellant’s actions leading up to the late payment, the timing of those actions, and whether they reflect ordinary business care and prudence, such as an ordinarily intelligent and prudent businessperson would have performed under similar circumstances. (*Appeal of Moren*, 2019-OTA-176P.) The taxpayer bears the burden of proving an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid.*)

Appellants contend that the underpayment of tax was caused by the taxable income generated by Valley Front, LLC (Valley Front), a pass-through entity in which appellants were

¹ FTB does not assert willful neglect is present.

members. Appellants assert that Valley Front commenced an Internal Revenue Code (IRC) section 1031 exchange in 2021, which resulted in appellants recognizing taxable gain (boot) from the exchange. Appellants assert that they did not expect the taxable gain and did not receive a Schedule K-1 reporting the gain from Valley Front until September 13, 2022, after the April 15, 2022 tax payment deadline. As support, appellants submit a copy of the Schedule K-1 from Valley Front on or around September 13, 2022.

Asserted lack of documentation or difficulty in calculating a tax liability does not, by itself, constitute reasonable cause for a late payment of tax. (*Appeal of Moren, supra.*) A taxpayer's failure to receive an information return does not excuse a taxpayer from their duty to report the income on the return. (*Ibid.*) If a taxpayer asserts that they do not have the information necessary to make a reasonably accurate estimate of their tax liability, the taxpayer must show the efforts made to acquire that information from the source that held it, and that difficulties in obtaining the necessary information led to the delay in payment. (*Ibid.*) Appellants have not made such a showing.

Appellants have not shown what efforts they made, if any, before the payment due date to acquire relevant information from Valley Front about their 2021 tax obligations. Additionally, appellants were the majority owners (60 percent) of Valley Front and, per the Schedule K-1, shared a mailing address with Valley Front. Based on this, it would be reasonable to expect appellants to have access to relevant information from Valley Front in advance of the payment due date. Given these facts, it is particularly incumbent upon appellants to demonstrate what efforts they made, if any, to acquire relevant information from Valley Front about their 2021 tax obligations before the payment due date. Appellants have not made such a showing and, accordingly, have not demonstrated reasonable cause to abate the late-payment penalty.

Issue 2: Whether there is a basis to abate the underpayment of estimated tax penalty.

Except as otherwise provided, R&TC section 19136 conforms to IRC section 6654 and imposes a penalty for the failure to timely make estimated income tax payments by the due date of each required installment period. (R&TC, § 19136(a); IRC, § 6654(a), (b)(1).) 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(a)(2); 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 appellants did not timely make an estimated tax payment for their fourth quarter installment due on April 15, 2022. Instead, appellants made their final estimated tax payment on August 11, 2022. Appellants assert that they were unable to estimate their fourth quarter installment payment because the necessary financial documentation was unavailable until September 13, 2022, after the April 15, 2022 due date for the estimated tax payment.

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, the imposition of 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.*) 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.) Difficulty in estimating the tax liability from a partnership 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


² IRC section 6654(e)(3)(B) also provides for 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 or in the tax year preceding such tax year. Appellants do not contend, and the record does not show, that either exception applies.

HOLDINGS

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

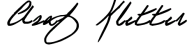
DISPOSITION

FTB’s denial of appellants’ claim for refund is sustained.


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Veronica I. Long
 Administrative Law Judge

We concur:

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Asaf Kletter
 Administrative Law Judge

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Ovsep Akopchikyan
 Administrative Law Judge

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