

4. Appellants requested a refund of the estimated tax penalty based on reasonable cause.¹
5. FTB denied appellants' claim for refund, and this timely appeal followed.

DISCUSSION

For taxpayers required to make estimated tax payments, California requires taxpayers to make installment payments of 30 percent of the required annual payment of total estimated tax by April 15 of the current taxable year, 40 percent of the required annual payment by June 15 of the current taxable year, zero percent by September 15 of the current taxable year, and 30 percent of the required annual payment by January 15 of the following taxable year. (R&TC, § 19136.1 [modifying Internal Revenue Code (IRC), § 6654(d)(1)(A)].) Estimated tax payments are generally required of persons who owe more than \$500 in tax, after applying income tax withholdings and credits. (R&TC, § 19136(c)(2).)

California conforms to IRC section 6654 and imposes an estimated tax penalty for the failure to timely make estimated income tax payments. (R&TC, § 19136(a).) 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); *Appeal of Johnson*, 2018-OTA-119P.)

There is no general reasonable cause exception to the estimated tax penalty. (*Appeal of Johnson, supra.*) Instead, the law allows for abatement of the estimated tax penalty if, by reason of casualty, disaster, or other unusual circumstances, imposition of the penalty would be against equity and good conscience. (IRC, § 6654(e)(3)(A).) The exception for unusual circumstances is considerably narrower than reasonable cause. (*Appeal of Mazdyasni*, 2018-OTA-049P; IRS Field Service Advisory (Jun. 2, 1994) 1994 WL 1725487 (FSA).) The waiver may be appropriate where: (1) the taxpayer's books and records were destroyed by fire or other casualty; (2) an estimated tax payment was not made due to the death or serious illness of the taxpayer; (3) imposition of the penalty would be inequitable because, for example, the taxpayer substantially overstated their tax liability on their return or because the taxpayer designated that an overpayment of tax for the prior year be credited against their estimated tax, but the overpayment is offset for either past-due child support or non-tax federal debt, and (4) the taxpayer was not notified of the offset until after the due date for the estimated tax payment. (*Appeal of Mazdyasni, supra*; FSA, *supra*, 1994 WL 1725487.) Thus, for example, the IRS has

¹ Appellants' opening brief erroneously requests a refund of \$1,073, including the \$57 already refunded.

waived the estimated tax penalty in situations where a tax law changed, a disaster occurred, a required accounting method changed, or a government action or inaction, caused extreme difficulty in estimating the tax. (*Appeal of Mazdyasni, supra.*)

Appellants argue that their situation amounts to “unusual circumstances” to allow for waiver of the estimated tax penalty. (See IRC, § 6654(e)(3)(A).) Appellants assert that there is reasonable cause for their failure to make the correct estimated payments such that FTB should abate the estimated tax penalty. In support appellants cite to: (1) R&TC section 19132(a); (2) *U.S. v. Boyle* (1985) 469 U.S. 241 (*Boyle*); (3) *Appeal of Mauritzson*, 2021-OTA-198P, applying *Boyle, supra*; and (4) *Neonatology Associates, P.A. v. Commissioner* (2000) 115 T.C. 43 (*Neonatology*); (5) *Whitsett v. Commissioner*, T.C. Memo. 2017-100 (*Whitsett*).² Appellants contend that they disclosed year-to-date income information to their CPA and received advice on how much to pay in California estimated taxes, and that their CPA advised them to skip the third installment payment. Lastly, appellants ask for waiver of the penalty because the IRS waived the federal estimated tax penalty.

As noted above, relief from the estimated tax penalty is not available based solely on a showing of reasonable cause.³ Moreover, some of the authorities that appellants cite in support of their reasonable cause arguments relate to other penalties which may be abated solely on a showing of reasonable cause and which are not at issue here. (See R&TC, §§ 19131, 19132, 19164; see also *Boyle, supra*; see also *Neonatology, supra*; see also *Whitsett, supra.*) Additionally, to establish that reasonable cause exists under *Boyle, supra*, taxpayers must show they relied on a tax professional for substantive advice as to whether a tax liability exists when the following conditions are met: (1) the person relied upon is a tax professional with competency in the subject tax law; and (2) the tax professional’s advice is based on taxpayers’ full disclosure of relevant facts and documents. (*Boyle, supra*, 469 U.S. at p. 252; *Appeal of Summit Hosting LLC*, 2021-OTA-216P.)

² In their claim for refund filed with FTB, appellants also cite to Internal Revenue Manual (IRM) section 20.1.1.3.2.2.5. The IRM provides for federal procedures and does not apply to California penalty abatement, and in any event IRM section 20.1.1.3.2.2.5 contains the same requirements for when taxpayers may reasonably rely on substantive advice of a CPA, as laid out in *Boyle, supra*.

³ The estimated tax penalty will not apply if it is established that either: the failure to timely pay the estimated tax payment was due to reasonable cause *and* the taxpayer retired after reaching age 62; or the taxpayer became disabled in the taxable year for which the estimated tax payments were required to be made or in the previous year. (IRC, § 6654(e)(3)(B).) Appellants have not alleged disability or that they are retired and over age 62; therefore, this narrow exception will not be discussed further.

Appellants assert that they expected decreased income in 2018 and would not be able to pay 110 percent of the prior year's tax as required in order to fall within the safe harbor found in IRC section 6654(d)(1)(B)(ii) and (d)(1)(C)(i). Appellants contend that they gave their CPA all relevant information about their 2018 income-to-date and income expectations, and that the CPA advised them as to what amounts should be paid for each estimated tax installment, including skipping the third installment. Appellants submitted emails that purportedly support their position with respect to their CPA's advice. However, upon review of the emails, it is clear that at least with respect to the third installment, the CPA's advice was to skip the federal installment, not the California installment. California law modifies federal law in that it does not require a third installment payment. An email on December 19, 2018, from the CPA states that "I was thrown off by having state withholding in one year and not the next. I recommend catching up your state amount [] by 1/15/19." Thus, even if the estimated tax penalty could be abated solely for reasonable cause based on appellants' reliance on the advice of their CPA, it is clear that the CPA did not have all relevant facts upon which to advise appellants, such as whether they had tax withholding from state wages. (See *Appeal of Summit Hosting LLC, supra.*)

With respect to appellants' claim that their situation constituted "unusual circumstances," OTA notes that difficulty in estimating tax is not an unusual circumstance for purposes of penalty abatement under IRC section 6654(e). (*Appeal of Mazdyasni, supra.*) Therefore, appellants have not established the type of unusual circumstances that would warrant abatement of the estimated tax penalty.

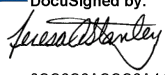
Lastly, with respect to the IRS penalty abatement, the IRS offers abatement of penalties which may include a one-time abatement of timeliness penalties where taxpayers have a good filing and payment history and may have abated appellant's federal estimated tax penalties under this one-time abatement provision. California's law allowing for a one-time abatement of timeliness penalties when taxpayers have a good filing and payment history applies only to taxable years beginning on or after January 1, 2022. (R&TC, § 19132.5.) Appellants have not offered evidence of the reason(s) the IRS abated the late-filing penalty. Thus, appellants have not established they are entitled to abatement based on the IRS's abatement of the federal estimated tax penalty.

HOLDING

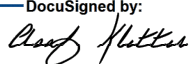
Appellants are not entitled to waiver of the estimated tax penalty.

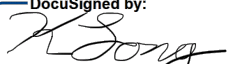
DISPOSITION

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

DocuSigned by:

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Teresa A. Stanley
Administrative Law Judge

We concur:

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Asaf Kletter
Administrative Law Judge

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Keith T. Long
Administrative Law Judge

Date Issued: 1/31/2024