

FACTUAL FINDINGS

1. Appellants, Colorado residents, filed a joint California nonresident income tax return for the 2021 tax year, reporting California adjusted gross income (AGI) of over one million dollars.
2. Appellants failed to make sufficient estimated tax payments towards their 2021 California tax liability, resulting in the imposition of a \$1,880 estimated tax penalty, plus applicable interest, pursuant to R&TC sections 19136 and 19101.
3. After paying the estimated tax penalty and applicable interest, appellants filed a claim for refund requesting abatement of the penalty and interest.
4. FTB denied appellants' claim for refund and this timely appeal followed.

DISCUSSIONIssue 1: Whether appellants have established that the estimated tax penalty should be abated.

Subject to certain exceptions, R&TC section 19136 conforms to Internal Revenue Code (IRC) section 6654 and imposes a penalty for the failure to timely make estimated income tax payments at the end of the installment periods. One such exception is California's modification to the federal safe harbor in IRC section 6654(d)(1)(B)(ii), which permits individuals to make estimated tax payments equivalent to 100 percent of the tax shown on the return for the preceding taxable year if that amount is less than 90 percent of the tax shown on the return for the taxable year. R&TC section 19136.3, however, provides that for tax years beginning on or after January 1, 2009, the federal safe harbor in IRC section 6654(d)(1)(B)(ii) does not apply to individuals reporting California AGI of one million dollars or more.

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.¹ (*Appeal of Johnson*, 2018-OTA-119P.) Therefore, the estimated tax penalty under IRC section 6654 is mandatory unless the taxpayer establishes that a statutory exception applies. (*Ibid.*)

¹ IRC section 6654(e)(3)(A) permits the government to waive an addition to tax if "by reason of casualty, disaster, or other unusual circumstances the imposition of such addition to tax would be against equity and good conscience." However, appellants do not argue this exception applies and the facts do not indicate that the imposition of the estimated tax penalty would be against equity and good conscience. IRC section 6654(e)(3)(B) provides a reasonable cause exception for taxpayers that retired after having attained age 62, or became disabled, in the taxable year for which the estimated payments were required to be made or in the previous year. However, neither appellant retired after having attained age 62 nor claimed to be disabled during the 2020 or 2021 tax year.

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Appellants concede that the estimated tax penalty was properly calculated and imposed. Nor do appellants argue that a statutory exception applies. Instead, appellants request abatement on the basis that they made a good faith effort to make the proper estimated tax payments. Appellants assert they were unable to calculate their personal income tax liability before the final estimated payment was due (i.e., January 18, 2022) because their income for the 2021 tax year derived from a subchapter S corporation and the tax return for the corporation was not completed until March 2022. Appellants also explain that they believed California conformed to the federal safe harbor in IRC section 6654(d)(1)(B)(ii).² As stated by appellants, their request is for an “equitable allowance” or “mercy judgement.” However, neither the IRC nor the R&TC permits abatement of the estimated tax penalty for the reasons presented here. As such, appellants have not established that the estimated tax penalty should be abated.

Issue 2: Whether appellants have established a basis upon which interest can be abated.

Imposing interest on a tax deficiency is mandatory. (R&TC, § 19101(a).) Interest is also charged on penalties. (R&TC, § 19101(c)(2).) Interest is not a penalty but is compensation for the taxpayer’s use of money after it should have been paid to the state, and it can only be abated in certain limited situations when authorized by law. (*Appeal of Moy*, 2019-OTA-057P.) There is no reasonable cause exception to the imposition of interest. (*Ibid.*)

To obtain interest abatement, appellants must qualify under either R&TC section 19104 or R&TC section 21012.³ First, R&TC section 19104 does not apply here because appellants do not allege, and the evidence does not show, that the interest at issue is attributable, in whole or in part, to any unreasonable error or delay by an officer or employee of FTB when performing a ministerial or managerial act. Second, R&TC section 21012 does not apply because appellants do not allege, and the evidence does not show, FTB provided appellants with any requested written advice. Accordingly, appellants have not established a basis upon which interest can be abated.

² Appellants do not assert that the federal safe harbor provision indeed applies, but instead, offers the explanation as support of their good faith effort to comply with California law. In any event, because appellants’ joint tax return reported California AGI of over one million dollars, the safe harbor provision does not apply to appellants.

³ Pursuant to R&TC section 19112, FTB also has discretion to waive interest, but OTA does not have jurisdiction to review FTB’s exercise of such discretion. (See *Appeal of Moy*, *supra*.)

HOLDINGS

1. Appellants have not established that the estimated tax penalty should be abated.
2. Appellants have not established a basis upon which interest can be abated.

DISPOSITION

FTB's action denying appellants' refund claim is sustained.

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Lauren Katagihara

Administrative Law Judge

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