

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 230413072  
F. XU AND )  
F. ZHANG )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: F. Xu  
F. Zhang

For Respondent: Paige Chang, Attorney

C. AKIN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, F. Xu and F. Zhang (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$1,345 for the 2021 tax year.

Appellants waived the right to an oral hearing; therefore, the Office of Tax Appeals (OTA) decides this matter based on the written record.

**ISSUE**

Whether the underpayment of estimated tax penalty (estimated tax penalty) can be waived or abated.

**FACTUAL FINDINGS**

1. Prior to filing their return, appellants made the following tax payments for the 2021 tax year: tax withholdings of \$83,593, an estimated tax payment of \$6,000 on August 4, 2021, an estimated tax payment of \$100,000 on April 5, 2022, and an extension payment of \$128,853 on April 11, 2022.
2. On September 28, 2022, appellants timely filed a joint 2021 California Resident Income Tax Return (return) reporting adjusted gross income (AGI) in excess of \$1,000,000, total tax of \$318,797, tax withheld and payments totaling \$318,446, and tax due of \$351.

- Appellants also self-assessed an estimated tax penalty of \$1,265, resulting in a total balance due of \$1,616, which appellants remitted to FTB on September 26, 2022.
3. FTB issued a Notice of Tax Return Change – Revised Balance, increasing the estimated tax penalty from \$1,265, as self-assessed by appellants, to \$1,345, plus applicable interest, resulting in a balance due of \$84.76.
  4. Appellants paid the balance due and filed a claim for refund seeking abatement of the estimated tax penalty.
  5. FTB denied appellants’ claim for refund and this timely appeal followed.

### DISCUSSION

Except as otherwise provided, R&TC section 19136 conforms to Internal Revenue Code (IRC) section 6654 and imposes an addition to tax, which is treated and often referred to as a penalty, when taxpayers fail to timely pay estimated tax. The estimated tax penalty is similar to an interest charge in that it is calculated by applying the applicable interest rate to the underpaid estimated tax. (See IRC, § 6654(a); R&TC, § 19136(b); *Appeal of Johnson*, 2018-OTA-119P.) For the 2021 tax year, appellants’ AGI exceeded \$1 million, and as a result, appellants’ required annual payment for purposes of the estimated tax penalty was 90 percent of the tax shown on their 2021 return. (R&TC, §19136.3(a); IRC, § 6654(d)(1)(B)(i).) Appellants’ 2021 tax liability was \$318,797, and their required annual payment was therefore \$286,917 ( $\$318,797 \times 0.90$ ). Where estimated tax payments are due, California requires that the payments be made in installments on or prior to April 15 and June 15 of the applicable tax year, and January 15 of the subsequent tax year. (See R&TC, § 19136.1(a)(2); IRC, § 6654(c)(2).)<sup>1</sup> Appellants’ only timely estimated tax payments were their withholdings of \$83,593<sup>2</sup> and an estimated tax payment of \$6,000 on August 4, 2021. Thus, FTB properly imposed an estimated tax penalty on appellants’ underpayment of estimated tax.<sup>3</sup>

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<sup>1</sup> For federal income tax purposes, an additional installment is also due by September 15 of the applicable tax year. (See IRC, § 6654(c)(2).)

<sup>2</sup> See R&TC section 19136(e)(1) and IRC section 6654(g)(1).

<sup>3</sup> FTB used the annualized method pursuant to R&TC section 19136.1(b)(2) and IRC section 6654(d)(2) to compute appellants’ required estimated tax payments for each installment period and the resulting estimated tax penalty for underpayment of the required amounts.

Appellants do not contest the imposition or computation of the estimated tax penalty. Instead, appellants contend only that they “accidentally profited in stock,” resulting in a sudden large change (i.e., increase) in their income in 2021 compared to their previous tax years. Appellants provide a history of their prior taxable income and California tax amounts for the tax years 2017 through 2021, showing a significant increase in income and tax in the 2021 tax year. Appellants state that due to this change in 2021, they “didn’t prepare and didn’t estimate[] well” and ask that OTA waive the penalty. In their claim for refund filed with FTB, appellants explained that they received a one-time profit in 2021 and did not know that such profits from long-term investments are treated as normal income in California and that the California tax rate “goes up so sharply as income increase[s].”

Appellants’ arguments are reasonable cause type arguments. However, there is no provision in the IRC or R&TC that allows the estimated tax penalty to be abated solely on a finding of reasonable cause. (*Appeal of Saltzman*, 2019-OTA-070P.) As a result, there is no general reasonable cause exception to the imposition of the estimated tax penalty and the penalty is mandatory unless the taxpayer establishes that a statutory exception applies. (*Ibid*; *Appeal of Scanlon*, 2018-OTA-075P.) Again, appellants arguments are reasonable cause type arguments, and the statute does not justify waiver of the estimated tax penalty on this basis. (See *Appeal of Saltzman*, *supra*.)

Although there is no provision allowing for abatement of the estimated tax penalty based solely on reasonable cause, IRC section 6654(e)(3) provides two potential exceptions to the imposition of the estimated tax penalty. (See also *Appeal of Johnson*, *supra*.) First, under IRC section 6654(e)(3)(A), the estimated tax penalty may be waived if it is determined that, “by reason of casualty, disaster, or other unusual circumstances the imposition of [the penalty] would be against equity and good conscience.” Second, under IRC section 6654(e)(3)(B), the estimated tax penalty may be waived if: (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. Thus, the issue of whether taxpayers had reasonable cause for underpaying estimated tax only arises if the taxpayers first establish that they either retired or became disabled during the applicable tax year or preceding tax year. (*Ibid*; *Appeal of Johnson*, *supra*.) Appellants do not allege, and the record does not establish, that appellants either retired or became disabled in 2021, the applicable tax

year, or 2020, the preceding tax year. As such, appellants do not qualify for waiver of the penalty under IRC section 6654(e)(3)(B).


Additionally, appellants do not argue that their circumstances constitute a “casualty, disaster, or other unusual circumstances” that would cause the imposition of the penalty to be “against equity and good conscience.” Instead, appellants allege only that they profited from stock in 2021 and as a result had much higher income in 2021 than in prior tax years. Appellants state that they were unaware of the tax that would result and did not prepare and estimate well. Appellants’ one-time profit from stock is not a “casualty, disaster, or other unusual circumstances” that would cause the imposition of the penalty to be “against equity or good conscience.” (See *Farhoumand v. Commissioner*, T.C. Memo. 2012-131 [stock market volatility resulting in a higher tax liability not an unusual circumstance justifying waiver of the estimated tax penalty]; *Appeal of Johnson, supra* [unexpectedly high income from the profitable sale of real property not an unusual circumstance justifying waiver of the estimated tax penalty; *Appeal of Saltzman, supra* [a partner’s unexpected receipt of a guaranteed payment from a partnership not an unusual circumstance warranting waiver of the estimated tax penalty].) Rather than suffering an unexpected hardship or loss, appellants received substantial income during the 2021 tax year. As such, imposing an interest charge on the tax due on the income appellants received does not offend “equity and good conscience.” (See *Ibid.*) Thus, appellants also do not qualify for waiver of the penalty under IRC section 6654(e)(3)(A). Because appellants have failed to establish that they meet the requirements for either statutory exception to the imposition of the estimated tax penalty, the estimated tax penalty cannot be waived or abated.

HOLDING


The estimated tax penalty cannot be waived or abated.


DISPOSITION

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

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Cheryl L. Akin  
Administrative Law Judge

We concur:

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Andrew Wong  
Administrative Law Judge

DocuSigned by:  
  
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Asaf Kletter  
Administrative Law Judge

Date Issued: 3/8/2024