

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 230814174
V. SANCHEZ AND)
C. SANCHEZ)
_____)

OPINION

Representing the Parties:

For Appellants: V. Sanchez
C. Sanchez

For Respondent: Paige Chang, Attorney

For Office of Tax Appeals: Nguyen Dang, Attorney

K. GAST, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, V. Sanchez and C. Sanchez (appellants) appeal actions by the Franchise Tax Board (respondent) denying appellants' claim for refund of \$35,711.49¹ for the 2021 tax year.

Appellants waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUE

Whether appellants have established a basis to abate the estimated tax penalty and the late-payment penalty.

FACTUAL FINDINGS

1. Appellants failed to make sufficient estimated tax payments for the 2021 tax year.
2. Appellants also failed to timely pay their 2021 tax liability.
3. Respondent imposed an estimated tax penalty and a late-payment penalty.
4. Appellants paid the balance due and filed a refund claim seeking abatement of the penalties.

¹ This amount includes a \$26,744.49 late-payment penalty and an \$8,967 estimated tax penalty.

5. Respondent issued separate claim denial notices to appellants for each of the penalties and this timely appeal followed.

DISCUSSION

Appellants do not dispute that they failed to make sufficient estimated tax payments or that they did not timely pay their 2021 tax liability. Appellants take no issue with respondent's calculation of the penalty amounts. Instead, appellants argue that the estimated tax penalty should be abated because appellants' failure to make sufficient estimated tax payments was due to stock market volatility, which appellants assert led to their decision to sell off their stock portfolio. Appellants also request that the penalties be abated due to financial hardship.

There are two provisions permitting waiver of the estimated tax penalty. The first permits waiver of the penalty based upon a showing of reasonable cause (i.e., that the failure to make sufficient estimated tax payments occurred despite the exercise of ordinary business care and prudence), but only for those taxpayers who have either retired after having attained age 62 or became disabled, in the taxable year for which the estimated tax payments were required to be made or in the previous taxable year. (R&TC, § 19136 [incorporating with some modifications Internal Revenue Code (IRC), § 6654(e)(3)(B)].) The second waiver provision is available where the failure to make the required estimated tax payments was due to "casualty, disaster, or other unusual circumstances" such that imposition of the penalty would be against equity and good conscience. (IRC, § 6654(e)(3)(A).) Appellants bear the burden of proving entitlement to any refund. (*Appeal of Cornbleth*, 2019-OTA-408P.)

There is no evidence indicating the cause of appellants' failure to make sufficient estimated tax payments. Moreover, appellants' explanation as to why they decided to liquidate their stock portfolio does not explain why, after doing so, they did not make the required estimated tax payments. Without knowing the exact cause of appellants' noncompliance, the Office of Tax Appeals (OTA) is unable to determine whether waiver of the penalty is warranted under either of the above provisions. To the extent that the liquidation of appellants' stock portfolio may have resulted in a one-time capital gain for appellants, this does not constitute an unusual circumstance warranting penalty abatement. The term "unusual circumstance" generally refers to unexpected events that cause a hardship or loss, such that it would be inequitable to impose the penalty; it does not include receiving higher-than-expected income or having a higher-than-expected tax liability. (*Appeal of Johnson*, 2018-OTA-119P.)

In addition, OTA does not have the discretionary authority to provide penalty relief due to financial hardship. (See *Appeal of Robinson*, 2018-OTA-059P.) To obtain relief of the penalties at issue, appellants must point to a relevant provision of the law and show that they meet all the requirements for relief as specified under that provision, which appellants have failed to do here.²

HOLDING

Appellants have not established a basis to abate the estimated tax penalty and the late-payment penalty.

DISPOSITION

Respondent’s actions are sustained.

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Kenneth Gast
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Kenneth Gast
Administrative Law Judge

We concur:

DocuSigned by:
Sara A. Hosey
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Sara A. Hosey
Administrative Law Judge

Signed by:
Veronica I. Long
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Veronica I. Long
Administrative Law Judge

Date Issued: 8/20/2024

² For instance, 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, unless the failure was due to reasonable cause and not willful neglect. The determination of whether reasonable cause exists for the late payment requires an analysis of appellants’ actions leading up to the late payment, the timing of those actions, and whether they reflect ordinary business care and prudence, such as ordinarily intelligent and prudent businesspersons would have performed under similar circumstances. (See *Appeal of Moren*, 2019-OTA-176P.)