

In the Matter of the Appeal of:) OTA Case No. 230413150
B. SPENCE)
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1. Appellant timely filed a California Resident Income Tax Return (Form 540) for the 2019 tax year on October 13, 2020, reporting a total tax of \$262,305, payments of \$430,281, and a self-assessed estimated tax penalty of \$428, and requested the remaining \$167,548 overpayment be applied to the estimated tax for the 2020 tax year. Appellant reported an address in Goleta, California (Goleta address).
2. On February 16, 2021, FTB issued a Notice of Tax Return Change - Revised Balance for the 2019 tax year that was addressed to appellant at the Goleta address, informing appellant that only payments of \$262,305 were received for the 2019 tax year, not appellant's reported \$430,281. Due to the timing of the payments, FTB also assessed

- an estimated tax penalty of \$3,048, plus applicable interest.¹ Appellant paid the penalty and interest on March 1, 2021.
3. On October 22, 2019, FTB issued a Notice of Tax Return Change - Refund for the 2018 tax year that was addressed to appellant at the Goleta address, informing appellant of a refund for the 2018 tax year due to a difference in estimated tax and extension payments reported by appellant and the amount actually received by FTB (an additional \$56,000) and assessing an estimated tax penalty for the 2018 tax year.
 4. Appellant requested a refund of the estimated tax penalty for the 2019 tax year.
 5. FTB denied the claim for refund and this timely appeal followed.

DISCUSSION

Internal Revenue Code (IRC) section 6654 imposes an addition to tax, which is treated and often referred to as a penalty, where an individual fails to timely pay estimated tax. Subject to certain exceptions not relevant to the issues on appeal, R&TC section 19136 incorporates IRC section 6654. The estimated tax penalty is like an interest charge in that it is calculated applying the applicable interest rate to the underpayment of estimated tax. (See IRC, § 6654(a) [calculating the estimated tax penalty by reference to the interest rate imposed on underpayments]; R&TC, § 19136(b) [referring to R&TC section 19521 which, with modification, conforms to the federal interest provisions in IRC section 6621].) 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, 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; 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).)

A notice mailed to a taxpayer shall be sufficient if mailed to the taxpayer’s last known address. (R&TC, § 18416(b).) A taxpayer’s last known address is the address on the taxpayer’s last return filed with FTB, unless the taxpayer has provided clear and concise written or electronic notification of a different address, or FTB has an address it has reason to believe is the most current address for the taxpayer. (R&TC, § 18416(c).) It is well established that

¹ The \$262,305 of payments for the 2019 tax year were comprised of a 2018 tax year overpayment of \$52,281 applied to the 2019 tax year on April 15, 2019, payments of \$56,000 on September 15, 2019, and January 15, 2020, and a payment of \$98,024 on July 15, 2020.

notices sent by FTB to a taxpayer's last known address are sufficient, even if not received by the taxpayer. (*Appeal of Goodwin* (97-SBE-003) 1997 WL 258474.)

On appeal, appellant argues the estimated tax penalty should be waived because appellant made a second quarter payment of \$56,000 for estimated taxes for the 2019 tax year that appellant contends was incorrectly applied to the 2018 tax year, and FTB failed to notify appellant at the proper address. Appellant explains that prior to his retirement in August 2021, he used the Goleta address, which he claims was also his business address, as his tax filing address but he has not received any correspondence sent by FTB to the business address since August 2021. Appellant claims that if he had received notice regarding the allegedly misapplied 2019 estimated tax payment, he would have acted upon it.

The first provision permitting waiver of the estimated tax penalty does not apply here since appellant does not claim he retired after attaining the age of 62, or he became disabled, in the 2019 or 2018 tax year. (IRC § 6654(e)(3)(B).) To qualify for the second waiver provision, appellant must show 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).) 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. (*Appeal of Johnson*, 2018-OTA-119P.)

Here, appellant contends the estimated tax penalty should be waived because appellant did not receive notice that the 2019 tax year estimated payment was allegedly misapplied to the 2018 tax year due to FTB's use of the wrong address. However, evidence in the record shows that on October 22, 2019, FTB notified appellant of the discrepancy between the reported 2018 tax year payments and the payments received by FTB, using appellant's Goleta address on file. Indeed, appellant continued to report the Goleta address as his last known address when he later filed his 2019 Form 540 on October 13, 2020. On February 16, 2021, FTB again notified appellant at the Goleta address of the difference between the payments received by FTB and the payments reported by appellant for the 2019 tax year. Therefore, appellant's subsequent purported change of address in August 2021 had no impact on FTB's notices that were properly sent to appellant's last known address regarding the 2019 tax year underpayment of estimated taxes. The record shows FTB sent notices to appellant's last known address as defined in R&TC section 18416. Notices sent by FTB to a taxpayer's last known address are sufficient, even if not received by the taxpayer. (*Appeal of Goodwin*, *supra*.) These facts do not constitute an unusual circumstance warranting waiver of the penalty. (*Appeal of Johnson*, *supra*.) Appellant has failed to show entitlement to waiver of the estimated tax penalty.

HOLDING

Appellant is not entitled to waiver of the estimated tax penalty.

DISPOSITION

FTB's action is sustained.

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Erica Parker

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Erica Parker
Hearing Officer

We concur:

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Teresa A. Stanley

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Teresa A. Stanley
Administrative Law Judge

Signed by:

Seth Elsom

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Seth Elsom
Hearing Officer

Date Issued: 11/20/2024