

3. FTB issued a Notice of Tax Return Change – Refund to appellants indicating a reduction in the total amount of payments made by appellants for the 2021 tax year of \$390,000 (appellants reported total estimated tax and extension payments of \$5,822,854 while FTB’s records indicated only \$5,432,854 was paid). The notice also revised the estimated tax penalty and interest to \$20,430 and \$4,088.34, respectively. After including payments made with the return, FTB reported a refund to appellants of \$17,454.92.
4. Appellants filed a claim for refund of the estimated tax penalty based on reasonable cause.²
5. FTB denied the request for refund.
6. Appellants timely filed this appeal for a refund of the estimated tax penalty of \$20,430 based on reasonable cause.

DISCUSSION

Except where otherwise provided, R&TC section 19136 conforms to Internal Revenue Code (IRC) section 6654 and imposes an addition to tax for the underpayment of estimated tax, commonly referred to as an estimated tax penalty. (R&TC, § 19136(a); IRC, § 6654(a).) The estimated tax penalty does not apply if a taxpayer timely pays the required annual payment of estimated tax. (IRC, § 6654(d).) As applicable here, the “required annual payment” is defined as 90 percent of the tax shown on the current year tax return. (IRC, § 6654(d)(1)(B)(i); R&TC, § 19136.3.) California requires estimated tax be paid in quarterly installments of varying percentages. (See R&TC, § 19136.1(a)(2)(A)-(D).)

The estimated tax penalty is mandatory unless the taxpayer establishes a statutory exception applies. (*Appeal of Johnson*, 2018-OTA-119P.) The estimated tax penalty is waived if, by reason of casualty, disaster, or other unusual circumstances, imposing the penalty would be against equity and good conscience. (IRC, § 6654(e)(3)(A).) Likewise, the estimated tax penalty is waived for a newly-retired or newly-disabled taxpayer who meets certain statutory

² Appellants’ claim for refund was in the amount of \$4,419 which appears to be the amount of interest reported by them on their original return due on the underpayment of estimated tax. However, FTB treated the claim as if for the entire estimated tax penalty of \$20,430. Since FTB denied the refund in the amount of \$20,430 and appellants’ appeal letter to OTA disputes the imposition of the estimated tax penalty in that amount, the panel will determine whether appellants have established a basis to abate the estimated tax penalty in the amount of \$20,430.

requirements and establishes reasonable cause for the underpayment. (IRC, § 6654(e)(3)(B).) Outside these limited statutory exceptions for a newly-retired or newly-disabled taxpayer, the estimated tax penalty cannot be abated based solely on a finding of reasonable cause. (*Appeal of Johnson, supra; Appeal of Mazdyasni*, 2018-OTA-049P.)

Appellants have not challenged FTB's calculation, but instead argue they have established reasonable cause to abate the estimated tax penalty because they exercised ordinary business care and prudence in determining their estimated tax liability. Appellants state they owned a minority interest in Clear Creek Partners, LLC (Creek Partners), that Creek Partners owned an interest in Clear Creek Holdings, LLC (Creek Holdings), and that Creek Holdings was a joint venture between Creek Partners and Castle Hill-Baupost (Castle Hill). The joint venture agreement between Creek Partners and Castle Hill included various taxable income and loss allocation tiers, and Creek Partners only participated in the last taxable income allocation tier. Appellants state that for all years prior to 2021, Creek Partners was not allocated any taxable income under the taxable income allocation tier structure.

Appellants state they timely contacted Castle Hill management several times to determine how much taxable income would be allocated to Creek Partners for the 2021 tax year. In response to appellants' inquiries, Castle Hill management allegedly stated Creek Partners would not be allocated any taxable income. Based on the responses and a Schedule K-1 provided by Creek Holdings, appellants state they made their estimated tax payments with the understanding that there would be no taxable income to recognize from Creek Holdings. Appellants state that after making their estimated tax payments, they were informed by Castle Hill that Creek Partners would be allocated significant taxable income. Appellants argue the estimated tax penalty should be abated for reasonable cause because they exercised ordinary business care and prudence by timely and regularly inquiring with Castle Hill whether Creek Partners would be allocated income, making their estimated tax payments based on the information they received, and improving their process for subsequent tax years.

Although appellants argue there is reasonable cause to abate the estimated tax penalty, appellants do not argue they are newly-retired or newly-disabled persons who meet the statutory exception of IRC section 6654(e)(3)(B). Outside this limited statutory exception, the estimated tax penalty cannot be abated based solely on a finding of reasonable cause.


Nevertheless, the estimated tax penalty is waived if, by reason of casualty, disaster, or other unusual circumstances, imposing the penalty would be against equity and good conscience. (IRC, § 6654(e)(3)(A).) The phrase “casualty, disaster, or other unusual circumstances” generally refers to unexpected events that cause hardship or loss such that, due to the circumstances, it would be inequitable to impose the estimated tax penalty. (*Appeal of Johnson, supra.*) The exception for “other unusual circumstances” is considerably narrower than reasonable cause. (*Appeal of Mazdyasni, supra.*) Here, appellants unexpectedly realized significantly more income than anticipated despite receiving several responses from Castle Hill that they would not be allocated taxable income. An unexpected financial windfall is not generally considered a hardship or loss such that it would be inequitable to impose the estimated tax penalty. (*Appeal of Johnson, supra.*) Thus, appellants have not established that their failure to make timely estimated tax payments was due to casualty, disaster, or other unusual circumstance such that imposing the penalty would be against equity and good conscience.

HOLDING

Appellants have not established a basis to abate the estimated tax penalty.

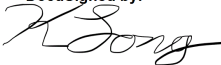
DISPOSITION

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

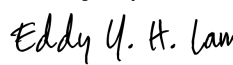
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 Greg Turner
 Administrative Law Judge

We concur:

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 Keith T. Long
 Administrative Law Judge

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 Eddy Y.H. Lam
 Administrative Law Judge

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