

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 240315550
C. MONZON AND)
J. MONZON)
_____)

OPINION

Representing the Parties:

For Appellants: C. Monzon
J. Monzon

For Respondent: Noel Garcia-Rosenblum, Attorney

S. KIM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, C. Monzon and J. Monzon (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants' claim for refund of \$2,000 for the 2022 tax year.

Appellants waived the right to an oral hearing; therefore, the matter was submitted to the Office of Tax Appeals (OTA) on the written record pursuant to California Code of Regulations, title 18, section 30209(a).

ISSUE

Whether appellants have established a basis to abate the underpayment of estimated tax penalty (estimated tax penalty).

FACTUAL FINDINGS

1. Appellants timely filed a 2022 California Resident Income Tax Return reporting a California adjusted gross income (AGI) of greater than \$1 million, total tax of \$123,110, withholdings of \$18,145, estimated tax payments of \$108,000,¹ and use tax of \$114, resulting in an overpayment of \$2,921.
2. FTB processed the return. FTB imposed an estimated tax penalty of \$2,000 and issued appellant a refund of \$921.

¹ Appellants made an estimated tax payment of \$108,000 on March 31, 2023.

3. Subsequently, appellants filed a claim for refund with FTB.²
4. FTB denied appellants' claim for refund.
5. Appellants timely filed this appeal.

DISCUSSION

Subject to certain exceptions not relevant here, R&TC section 19136 incorporates Internal Revenue Code (IRC) section 6654. IRC section 6654 imposes an addition to tax, which is treated and often referred to as a penalty, when an individual fails to timely pay estimated tax.³ Generally, to avoid this penalty, IRC section 6654(d)(1)(B) defines the required annual payment of estimated tax as the lesser of: (i) 90 percent of the tax shown on the current year return (current year safe harbor rule), or (ii) 100 percent of the tax shown on the prior year return (prior year safe harbor rule). However, for California purposes, the prior year safe harbor rule in IRC section 6654(d)(1)(B)(ii) does not apply if the taxpayer's adjusted gross income (AGI) for the current tax year is equal to or greater than \$1 million. (R&TC, § 19136.3.)

When FTB imposes a penalty, the law presumes that FTB properly imposed the penalty. (*Appeal of Xie*, 2018-OTA-076P.) To overcome that presumption, appellants must provide credible and competent evidence supporting a claim for relief. (*Ibid.*) Likewise, a taxpayer who claims a refund has the burden of proving his or her entitlement to the refund. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) The burden of proof is upon appellants as to all issues of fact. (Cal. Code Regs., tit. 18, § 30219(a).) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.)

Here, because appellants' AGI for the 2022 tax year is greater than \$1 million, appellants were required to make timely estimated tax payments of at least 90 percent of the tax shown on their 2022 return. Appellants made a single estimated tax payment of \$108,000 on

² Appellants also submitted a Form 5805, Underpayment of Estimated Tax By Individuals and Fiduciaries, indicating an overpayment of tax. Appellant did not submit Part III of Form 5805, Annualized Income Installment Method Schedule, to be used by taxpayers who earned taxable income at an uneven rate during the taxable year.

³ Where estimated tax payments are due, R&TC section 19136.1(a)(2) generally requires, for California income tax purposes, that the payments be made in installments of 30 percent, 40 percent, and 30 percent of the required annual payment of estimated tax, due on or prior to April 15 (first installment) and June 15 (second installment) of the applicable tax year, and January 15 (fourth installment) of the subsequent tax year, respectively. (See IRC, § 6654(c)(2).) For federal income taxes, an additional installment is also due by September 15 of the applicable tax year. (IRC, § 6654(c)(2).)

March 31, 2023, which was timely with respect to the fourth installment estimated tax payment.⁴ Appellants did not timely pay the full amount of their first installment or second installment estimated taxes.⁵ Therefore, FTB properly imposed the estimated tax penalty.

Appellants contend they timely paid their estimated taxes for 2022 with the March 31, 2023 payment. However, while timely for the fourth installment estimated tax payment, appellants' March 31, 2023 payment was made after the due dates for the first installment and second installment estimated tax payments. (See fn. 3, *ante*, page 2.) Appellants assert they made an "unplanned withdrawal in late May 2022." Taxpayers who earn income at an uneven rate during the tax year may use an annualized income installment method to lower the amount of a required installment payment based on the taxable income for the months in the taxable year preceding the due date. (R&TC, § 19136; IRC, § 6654(d)(2); see *Appeal of Saltzman*, 2019-OTA-070P, fn. 4.) However, appellants have not submitted an annualized income installment method schedule, or any other information to establish that an adjustment to the estimated tax penalty is warranted.

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, and there is no general reasonable cause exception to imposition of the estimated tax penalty. (*Appeal of Scanlon*, 2018-OTA-075P.) However, IRC section 6654(e)(3)(A) provides that the taxing agency may waive the estimated tax penalty if it determines that, "by reason of casualty, disaster, or other unusual circumstances the imposition of [the estimated tax penalty] would be against equity and good conscience." In this context, OTA interprets the terms "casualty" and "disaster" to refer to unexpected events, which cause a loss or hardship that, depending on the circumstance, may make it inequitable to apply the penalty; and it interprets the less specific words, "unusual circumstances," to refer to circumstances or events similar to the more specific terms that precede them. (*Appeal of Johnson*, 2018-OTA-119P.) Circumstances that have been found insufficient to warrant penalty abatement include stock market volatility and a "once in a lifetime" substantial capital gain from the sale of property. (*Ibid*).

Appellants contend their underpayment of estimated tax was due to unusual circumstances. Appellants assert that J. Monzon retired in 2022 at the age of 70, and that

⁴ FTB extended the deadline to pay the fourth installment estimated tax for 2022 until November 16, 2023, for individuals impacted by the 2023 California winter storms. (<https://www.ftb.ca.gov/file/when-to-file/california-severe-winter-storms.html>.) Appellants timely paid the fourth installment estimated tax payment for 2022.

⁵ Appellants' withholdings were applied to the first, second, and fourth installment estimated tax payments.

appellants made an “unplanned withdrawal in late May 2022” from a retirement plan that did not withhold California income tax. Appellants argue that the “one-time increase in [their] taxable income occurred in mid-year and [was] not anticipated,” and that “[i]t did not come to mind then to set up estimated tax payment schedules.” However, appellants have not explained the reason the withdrawal was unplanned or unanticipated, and the evidence does not establish that there were unusual circumstances sufficient to warrant abatement of the estimated tax penalty.

IRC section 6654(e)(3)(B) also provides for waiver of the penalty where the taxing agency determines that: (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.

Appellants assert that J. Monzon retired in 2022 at the age of 70.⁶ Therefore, if appellants’ underpayment of estimated tax was due to reasonable cause and not due to willful neglect, the estimated tax penalty may be waived. (See IRC, § 6654(e)(3)(B).) To establish reasonable cause for a late payment of tax, a taxpayer must show that his or her failure to make a timely payment of the proper amount of tax occurred despite the exercise of ordinary business care and prudence. (*Appeal of Scanlon, supra.*) Appellants argue that, because the withdrawal was unplanned and unanticipated, “[i]t did not come to mind then to set up estimated tax payment schedules.” However, the failure to timely pay tax caused by an oversight does not, by itself, constitute reasonable cause. (*Appeal of Friedman, 2018-OTA-077P.*) Moreover, ignorance of the law is not reasonable cause for failure to comply with statutory requirements. (*Appeal of Cremel and Koeppe, 2021-OTA-222P.*) Accordingly, appellants have not demonstrated they are entitled to a waiver of the estimated tax penalty.

⁶ While appellants have not provided evidence of J. Monzon’s retirement, FTB does not dispute appellants’ assertion.

HOLDING

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

DISPOSITION

OTA sustains FTB's action in denying the claim for refund.

DocuSigned by:

Steven Kim

Steven Kim

Administrative Law Judge

We concur:

DocuSigned by:

Amanda Vassigh

Amanda Vassigh

Administrative Law Judge

DocuSigned by:

Erica Parker

Erica Parker

Hearing Officer

Date Issued: 2/25/2025