

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 240817022
TOM E. DIXSON TRUST)
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OPINION

Representing the Parties:

For Appellant: Jeffrey C. Golden, CPA

For Respondent: Vicki M. Leclerc, Program Specialist

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Tom E. Dixon Trust (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant's claim for refund of \$10,283 for the 2022 taxable year.

Appellant 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

Has appellant established a basis to abate the underpayment of estimated tax penalty (estimated tax penalty)?

FACTUAL FINDINGS

1. Appellant filed a California Fiduciary Income Tax Return for 2022 reporting adjusted gross income (AGI) exceeding \$1 million and total tax of \$940,000.
2. On January 28, 2022, appellant sold real property with the gain on the sale creating the majority of appellant's 2022 income. Stewart Title Guaranty Co. withheld \$391,275 from the sale, which FTB credited to appellant's 2022 tax account.
3. Appellant made a single estimated tax payment of \$5,180 on April 14, 2022. Appellant paid the remaining tax balance on October 15, 2023.
4. FTB imposed an estimated tax penalty of \$10,283.

5. Appellant paid the penalty and interest and requested a refund from FTB.
6. FTB denied appellant's claim for refund.
7. This timely appeal followed.

DISCUSSION

California generally conforms to Internal Revenue Code (IRC) section 6654, which imposes an addition to tax, which is treated as a penalty, where a taxpayer fails to timely pay estimated tax. (R&TC, § 19136(a).) The estimated tax penalty is like an interest charge in that it is calculated by applying the applicable interest rate from the due date of the estimated tax payment until the earlier of the date it is paid or the 15th day of the 4th month following the close of the taxable year. (See IRC, § 6654(a) & (b); R&TC, § 19136(b); *Appeal of Johnson*, 2018-OTA-119P.) Generally, the required annual payment is the lesser of 90 percent of the tax shown on the current year's return or 100 percent of the tax shown on the prior year's return. (IRC, § 6654(d)(1)(B).) However, for taxpayers with AGI exceeding \$1 million, the law disregards IRC section 6654(d)(1)(B)(ii), which provides that if a taxpayer pays 100 percent of the tax shown on the taxpayer's return for the prior year, the estimated tax penalty will not apply to timely made installments. (R&TC, § 19136.3.) Therefore, to fall within the safe harbor, taxpayers with AGI exceeding \$1 million must pay at least 90 percent of the tax shown on the return for the current taxable year. (*Ibid*; IRC, § 6654(d)(1)(A).)

The estimated tax penalty is mandatory unless the taxpayer establishes that a statutory exception applies. (*Appeal of Johnson, supra.*) FTB may waive the estimated tax penalty in two instances: (1) 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; or (2) it determines that the taxpayer's failure to timely pay the estimated tax was due to reasonable cause, and the taxpayer either retired after reaching age 62, or became disabled, in the taxable year for which the estimated payments were required to be made or in the previous year. (IRC, § 6654(e)(3).) The phrase "casualty, disaster, or other unusual circumstances" generally refers to unexpected events that cause hardship or loss such that it would be inequitable to impose the estimated tax penalty. (*Appeal of Johnson, supra.*) The estimated tax penalty may not be abated based solely on a showing of reasonable cause. (*Appeal of Mazdyasni*, 2018-OTA-049P.)

Appellant requests abatement of the estimated tax penalty based on: (1) a first-time abatement; (2) following the real property withholding requirements in good faith; (3) reasonable cause; and (4) difficulty estimating tax when real property is sold, such that it would be an

unusual circumstance. Appellant contends that imposing the penalty would be against equity and good conscience.

Taking appellant's arguments in turn, OTA first notes that California has adopted a first-time abatement program for taxable years beginning on or after January 1, 2022. (R&TC, § 19132.5.) However, the first-time abatement only applies to late-payment and late-filing penalties, not to the estimated tax penalty. (R&TC, § 19132.5(c).) First-time abatement of the estimated tax penalty at issue is not available to appellant under California law.

Appellant asserts that it followed the law and ensured withholdings would be paid from the escrow account. However, withholdings are applied on the estimated tax due dates at the applicable percentage due on those dates. (R&TC, § 19136(e); IRC, § 6654(g)(1).) Appellant's real estate withholdings of \$391,275 were properly applied to appellant's required estimated tax installment payments. Appellant's timely estimated payments, including the real estate withholdings, totaled only \$396,455 (withholdings of \$391,275, plus the payment of \$5,180 on April 15, 2022), and did not satisfy appellant's required annual payment of \$846,000 for 2022 (appellant's current year tax of \$940,000 x 90%). Moreover, as noted above, appellant's reasonable cause arguments are unavailing as the estimated tax penalty may not be abated based upon a showing of reasonable cause. (*Appeal of Mazdyasni, supra*.)

Appellant's final argument is that the difficulty in ascertaining estimated tax upon the sale of a real property creates an unusual circumstance such that imposing the penalty would not be in the interest of equity or good conscience. Appellant asserts that the sale taking place early in the taxable year created difficulty in estimating year-end tax. Appellant contends that there was further complexity in calculating the estimated tax because it could have been calculated using two methods. Appellant states that it tried contacting FTB, but FTB was "unable to provide clear and definitive guidance in this unique situation." Furthermore, appellant claims that to calculate the gain on the sale of the property, it would have had to have access to a tax program, which is "typically available only to tax professionals." In *Appeal of Johnson, supra*, OTA considered whether the sale of a real property constituted a casualty, disaster, or an unusual circumstance. OTA held that it is not unusual for taxpayers to sell real property, and unlike a casualty, disaster, or similar unusual circumstances, the sale of real property is not an unexpected event that causes a loss or hardship. (*Ibid.*) OTA also held that it does not offend equity or good conscience to impose the estimated tax penalty when a taxpayer fails to pay estimated tax after recognizing a large capital gain on the sale of real property. (*Ibid.*) On the contrary, the sale occurred in January 2022, giving appellant four months prior to the first installment due date to make an estimate based on the known sales price of the property. If the out-of-state trustee

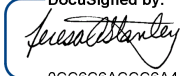
needed to access a tax program to make the estimate, appellant could easily have asked that question of its CPA or another tax professional. Moreover, other than the withholdings and the payment of \$5,180 on April 14, 2022, appellant did not make the required estimated tax payments by the June 15, 2022, or January 15, 2023 payment deadlines, which were six and 11 months after the sale occurred.¹ Appellant fails to meet its burden to establish a basis to waive the estimated tax penalty.

HOLDING

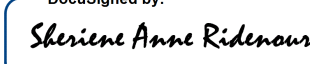
Appellant has not established a basis to abate the estimated tax penalty.

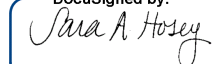
DISPOSITION

OTA sustains FTB's action denying appellant's claim for refund.

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Teresa A. Stanley
Administrative Law Judge

We concur:

DocuSigned by:

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Sheriene Anne Ridenour
Administrative Law Judge

DocuSigned by:

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Sara A. Hosey
Administrative Law Judge

Date Issued: 8/12/2025

¹ FTB waived the estimated tax penalty for the required payment due January 15, 2023.