

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
ELECTROCHIMICA CORPORATION)

For Appellant: A. J. Anttila
Assistant Secretary

For Respondent.: Crawford H. Thomas
Chief Counsel

John D. Schell
Counsel

O P I N I O N

This appeal is made pursuant to section, 26077 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Electrochimica Corporation for refund of penalty in the amount of \$124.35 for the income year ended September 30, 1967.

Appellant Electrochimica Corporation was organized under the laws of California in 1961. The company filed timely franchise tax returns until the year in question. The return for that year was due on December 15, 1967, however it was not filed until March 1, 1968. Appellant states that one reason for this late filing was a high turnover of business managers during the period in question. The individual occupying this company position is responsible for the timely filing of tax returns and the payment of liabilities. Appellant has submitted data which indicates that four different business managers were employed from February of 1967 through September of 1968. One of these individuals held this position from September 25, 1967, through January 23, 1968.

Appellant also explains that each year a certified public accounting firm was hired to conduct

Appeal of Electrochimica Corporation

the annual audit and prepare the tax returns. Appellant states that if an extension of filing time is necessary, then it is the accounting firm's duty to make a timely request. However, in regard to the year in question a misunderstanding developed between the firm and Electrochimica Corporation. Negotiations with the firm began prior to the filing due date, which is also the deadline for requesting an extension of filing time. Therefore appellant assumed that the accounting firm would make such a request. However, the firm interpreted its duties as beginning on the date of hiring, which was after the above deadline, and consequently a request for an extension was not submitted.

The sole issue of this appeal is whether the Franchise Tax Board's penalty assessment with respect to the above late filing was proper. The assessment was made pursuant to section 25931 of the Revenue and Taxation Code, which provided in part:

If any taxpayer fails to make and file 'a return required by this part on or before the due date of the return or the due date as extended by the Franchise Tax Board, then, unless it is shown that the failure is due to reasonable cause and not due to wilful neglect, 5 percent of the tax shall be added to the tax for, each 30 days or fraction' thereof elapsing between the due date of the return and the date on which filed, but the total addition shall not exceed 25 percent of the tax....

The taxpayer has the burden of proving that the late filing was due to reasonable cause and not due to wilful neglect. (C. Fink Fisher, 50 T.C. 164.) Both conditions must exist. (Rogers Hornsby, 26 B.T.A. 591.). In order to establish reasonable cause, the taxpayer must demonstrate that the failure to file occurred notwithstanding the exercise of ordinary business care and prudence. (Sanders v. Commissioner, 225 F.2d 629, cert. denied, 350 U.S. 967 [100 L. Ed. 839]; Appeal of La Salle Hotel Co., Cal. St. Bd. of Equal., No v. 23, 1966.)

With, respect to the instant situation appellant contends that the high turnover of key personnel, and the accounting firm's failure to request an extension of filing time, establish reasonable cause. Since the person hired as business manager on September 25, 1967,

Appeal of Electrochimica Corporation

remained in that position through the filing due date, appellant's reliance upon changes of personnel is in effect an argument that this inexperienced employee was unfamiliar with the filing requirements. However, it is well settled that ignorance of the law does not establish reasonable cause. (Attitude Associates, Inc., T.C. Memo., Nov. 28, 1962, aff'd, 324 F.2d 499; Appeal of David and Hazel Spatz, Cal. St. Bd. of Equal., May 4, 1970.)

Nor do we think that appellant exercised ordinary business care and prudence when it relied upon the accounting firm, which had not yet been hired, to secure an extension. Even if the firm had been retained, such reliance upon an agent generally does not establish reasonable cause'. (Standard Fruit Product Co., T. C. Memo., Aug. 22, 1949; Appeal of William T. and Joy P. Orr, Cal. St. Bd. of Equal., Feb. 5, 1968) We conclude that appellant has failed to carry its burden of proof and therefore the Franchise Tax Board's action must be upheld.

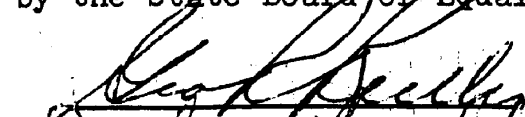
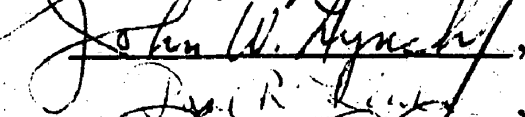
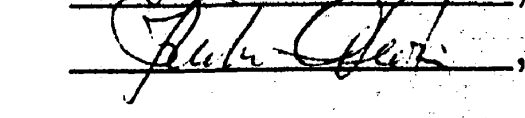
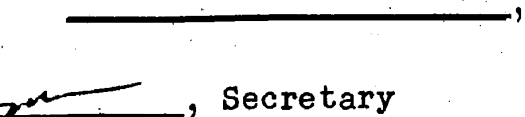
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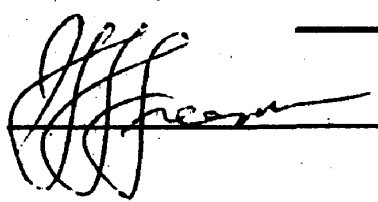
Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

Appeal of Electrochimica Corporation.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 26077 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Electrochimica Corporation for refund of penalty in the amount of \$124.35 for the income year ended September 30, 1967, be and the same is hereby sustained.'

Done at Sacramento, California, this 3rd day of August, 1970, by the State Board of Equalization.


_____, Chairman

_____, Member

_____, Member

_____, Member
_____, -Member

ATTEST:  _____, Secretary