



'Appeal of Beverly **Bolton** Fisher Trust,  
California Canadian Bank, Trustee

The sole question presented by the appeal is **whether** the respondent's imposition of a **25** percent delinquent filing penalty **was** proper.

**Appellant**, a complex testamentary trust, was created on September 30, 1971, and has, since its inception, been administered by the San Diego office of its trustee, the California Canadian Bank. Prior to 1976, trustee's San Diego office filed fiduciary income tax returns for trusts which were administered at that location. In 1976, however, the preparation of all fiduciary returns, including those **which were** previously prepared in its San Diego office, was consolidated in the trustee's San Francisco office. The trustee states that **in the** course of these changes the San Diego administration assumed that appellant's return would be filed from San Francisco, while that office believed that the return was being prepared in San Diego.

In March 1977, trustee conducted its routine tax compliance review and discovered that no fiduciary return for the year ended on June **30**, 1976, had been filed for appellant. Trustee immediately prepared a return and mailed it together with the appropriate tax, interest and penalty on March 15, 1977. **S i n c e** the return had been due on October 15, 1976, the filing was five months late. Appellant then claimed a refund of the penalty paid which was denied upon respondent's finding that no reasonable cause had been shown to exist sufficient to excuse the penalty. This appeal followed.

Section 18681 of the Revenue and Taxation Code provides that if a taxpayer fails to file a timely return a 5 percent penalty per month shall be added to the tax unless the failure to file was due to reasonable cause and not willful neglect. In the instant matter appellant does not dispute the fact that the return was not filed by the due date, but claims that the combination of a change of administrative personnel in trustee's San Diego office and trustee's decision to consolidate the preparation of fiduciary returns in its San Francisco office constitutes reasonable cause for its failure to file a timely return. It further asserts that the actions which the trustee immediately and voluntarily took to correct its omissions indicate the absence of willful neglect.

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In the case at hand it might well be established that the prompt rectification by the trustee, plus the existence of complicated business circumstances, absolve it from being guilty of willful neglect. However, as we held in Appeal of Citicorp Leasing, Inc., decided by this board on January 6, 1976, the penalty will not be avoided unless appellant bears its burden of establishing that the two-prong test of existence of reasonable cause as well as absence of willful neglect has been met. Therefore, mere absence of willful neglect will not excuse the penalty; reasonable cause must still be shown. In order to establish reasonable cause the taxpayer must show that the failure to file occurred despite the exercise of ordinary business care and prudence. (See Appeal of Citicorp Leasing, Inc., supra.)

We faced a similar situation in the Appeal of Loew's San Francisco Hotel Corp., decided by this board on September 17, 1973, and agree with respondent in its contention that the instant case is analogous to Loew's and thereby merits the same result. In Loew's, the confusion attendant upon a corporate merger together with the physical movement of appellant's tax department was held not to establish the requisite reasonable cause sufficient to excuse the penalty.

An additional factor in finding that reasonable cause did not exist in this instance is the five month delay of trustee in discovering the omission. Although the delinquent returns were filed prior to receipt of any notification from respondent, the length of the delay reinforces the argument that the exercise of ordinary business care and prudence necessary to establish reasonable cause was not demonstrated. (See Citicorp Leasing, Inc., supra.)

We conclude that the appellant presents no more compelling evidence of reasonable cause than did the taxpayer in Loew's and, therefore, no circumstance exists which would justify relief from the penalty imposed.

Based upon the foregoing, we must sustain respondent's imposition of a penalty in this case.

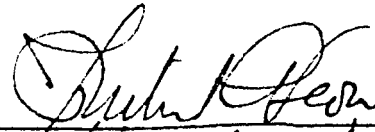

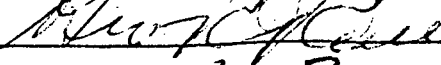

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O R D E R

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

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060, subsection (a), of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of **the** Beverly **Bolton** Fisher Trust, California Canadian Bank, Trustee, for refund of a delinquent filing penalty in the amount of **\$1,329.00** for the year ended June 30, 1976, be and the same is hereby sustained.

Done at Sacramento, California, this 6th day of February , 1980, by the State Board of Equalization.

  
\_\_\_\_\_, Chairman  
  
\_\_\_\_\_, Member  
  
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