



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
WEAVER EQUIPMENT COMPANY)

For Appellant: John Perry
Certified Public Accountant

For Respondent: Mark McEvilly
Counsel

O P I N I O N

This appeal is made pursuant to section 26075, subdivision (a), of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Weaver Equipment Company for refund of an estimated tax penalty in the amount of \$585.00 for the income year ended October 31, 1978. During the course of these proceedings, appellant made an additional payment of \$1,834.93 against its estimated tax penalty liability for the income year ended October 31, 1978; accordingly, we will treat the appeal of that amount as an appeal from the denial of a claim for refund pursuant to section 26078 of the Revenue and Taxation Code.

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The sole issue for determination is the propriety of the estimated tax penalty imposed by respondent for the year in issue.

Appellant, a California corporation, files its returns on the basis of a fiscal year ending October 31. Pursuant to an extension of time, appellant filed its return for the income year ended October 31, 1977. On the return, appellant claimed credits totaling **\$17,400.00** to be applied against the reported tax liability of **\$12,593.00**. Appellant requested that the claimed overpayment of **\$4,807.00** be credited as the first installment of its estimated tax for the following year, the income year ending October 31, 1978.

Respondent determined that appellant had incorrectly calculated the credits claimed on the 1977 return. As corrected, the credits totaled **\$17,200.00**, instead of **\$17,400.00** as claimed by appellant. On March 31, 1978, respondent notified appellant of the correct amount of credit available for transfer to the next income year. Appellant did not replace the \$200.00 difference between the claimed credits and the actual credits. Instead, appellant continued to use the incorrect amount in calculating its estimated tax liability for the October 31, 1978, income year.

On its return for the income year ended October 31, 1978, appellant reflected a tax liability of **\$69,415.00**, claimed credits totaling **\$70,000.00**, and requested a refund of a claimed overpayment of \$585.00. Respondent determined that appellant was subject to a penalty for underpayment of estimated tax for the October 31, 1978, income year in the amount of **\$2,094.09**. Respondent notified appellant that the claim for refund of \$585.00 was disallowed and that an underpayment of estimated tax penalty had been imposed, creating a balance due from appellant of **\$1,733.81**. It is from this action that appellant appeals.

The mandatory provisions concerning corporate estimated tax payments, penalty and penalty relief are contained in sections 25561, 25563-25565 and 25951-25954 of the Revenue and Taxation Code. The only exceptions to the imposition of the underpayment of estimated tax penalty are contained in section 25954. (See generally Appeal of International Business Machines Corporation, Cal. St. Bd. of Equal., Aug. 16, 1979; Appeal of J. F. Shea Co., Inc., Cal. St. Bd. of Equal., Aug. 16, 1979.) Appellant does not deny the existence of an underpayment,

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nor does it specifically claim relief pursuant to section 25954. Instead, appellant contends that it should be granted relief since it complied with the intent of the law. We are not unsympathetic to appellant's position in view of the fact that a \$200.00 mistake in the amount of estimated tax paid resulted in a penalty in excess of \$2,000.00. (See Appeal of Shea Co., Inc., supra, where an \$1,100.00 underpayment resulted in a penalty in excess of \$8,500.00.) Admittedly, however, appellant does not come within the statutory exceptions set out in section 25954, and has cited no authority to support its equitable plea. In effect, appellant's intent to comply with the law, which is not contested, only tends to establish "extenuating circumstances," "reasonable cause" or "a lack of willful neglect." It is well settled, however, that relief from the penalty for underpayment of estimated tax is not available upon a showing of "extenuating circumstances," "reasonable cause" or "a lack of willful neglect." (Appeal of J. F. Shea Co., Inc., supra; Appeal of Decoa, Inc., Cal. St. Bd. of Equal., April 5, 1976.) Under present law, the penalty may be excused only if the taxpayer comes within one of the exceptions set out in section 25954. Since appellant does not come within any of these exceptions, respondent's action in this matter must be sustained.

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,

