



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
MARY KAY COSMETICS, INC.)

For Appellant: Lavonne Daniels
Tax Analyst

For Respondent: Jon Jensen
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 Mary Kay Cosmetics, Inc., for a refund of penalty in the amount of **\$2,314.20** for the income year 1978.

Appeal of Mary Kay Cosmetics, Inc.

The issue is whether the penalty for failure to file a timely 1978 return was properly computed and assessed.

Appellant's return for income year 1978 was due March 15, 1979. On that day, appellant had \$51,120 on deposit with respondent. On April 9, 1979, appellant paid respondent an additional \$23,660. On June 15, 1979, three months late, appellant filed its '1978 return reporting \$66,548 as its tax liability. No reason for the late filing has been offered.

The application of the penalty for failure to file a timely return is controlled by statute., Revenue and Taxation Code section 25931 requires **that**, unless the late filing is due to reasonable cause and not due to willful neglect, 5 percent of the tax shall be added to the tax for each month or fraction of a **month** between the due date for the return and the date on which it was filed, but provides that the penalty shall **not** exceed 25 percent. (Appeal of Normandy Investments, Ltd., Cal. St. Bd. of Equal., Sept. 12, 1968.) Section **25931.3** provides that for the purposes of 25931, the **amount** of tax shall be reduced by the amount which is paid on or before the due date for the return.

For purposes of computing the penalty imposed **by** section 25931, the reported tax due of \$66,548 may be reduced by \$51,120 but not by the additional \$23,660 which was not paid until after the March 15, 1979, due date for the return. Taking \$66,548 and reducing it by \$51,120 leaves \$15,428; and 15 percent of that amount (5% per month for 3 months) is **\$2,314.20**, the properly computed penalty. Under the circumstances, respondent Franchise Tax Board acted properly in denying appellant's claim for refund in the amount of the penalty.

Appeal of Mary Kay Cosmetics, Inc.

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 26077 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Mary Kay Cosmetics, Inc., for a refund of penalty in the amount of **\$2,314.20** for the income year 1978, **be and** the same is hereby sustained.

Done at Sacramento, California, this 19th day of May , 1981, by the State Board of Equalization, with all **Board** members present.

Ernest J. Dronenburg, Jr. , Chairman

George R. Reilly , Member

William M. Bennett , Member

Richard Nevins , Member

Kenneth Cory , Member