

Appeal of Empire Gas Corporation

The **issue for** determination is whether respondent properly imposed an estimated tax penalty for the income year in issue.

While appellant apparently did no business in this state during the appeal year, it did file a combined report for its 14 subsidiary corporations qualified to do business in California; that report was filed on the basis **of** a fiscal year ending June 30. On June 13, 1980, appellant paid \$30,034 in estimated tax for the appeal year; no prior installment payments had been made. On the combined report for the year in question, appellant claimed a credit for taxes paid in the above amount, and claimed a refund of \$2,381.

Upon review of its claim for refund, respondent determined that appellant was subject to a penalty in the amount of \$924.02 for underpayment of estimated tax for the appeal year. The \$2,381 overpayment of franchise tax liability was applied to the penalty amount, thereby resulting in a refund to appellant in the amount of' **\$1,456.98.** It is from respondent's action in partially disallowing its claim for refund that appellant **appeals.**

Every corporation subject to the franchise tax is required to file a declaration of estimated tax and pay the estimated tax during the income year. (Rev. & Tax. Code, §§ 25561-25565.) In no event shall a **ccrpo**-ration's estimated tax be less than the minimum tax. (Rev. & Tax. Code, § 25561.) If the amount of estimated tax exceeds \$200, it is payable in four equal **install-**ments. (Rev. & Tax. Code, § 25563, subd. **(d).**) If it does not exceed \$200, the estimated tax is payable on or before the 15th day of the fourth month of the income year. (Rev. & Tax. Code, § 25563, subd. **(c).**) Corporations which underpay their estimated tax are subject to a penalty which is computed at the specified rate of interest on the amount of the underpayment. (Rev. & Tax. Code, §§ **25951-25953.**) The amount of the underpayment is defined as the excess of the amount of the installment which would be required to be paid if the estimated tax were equal to 80 percent of the tax shown on the return for the income year, over the amount actually paid on or before the due date of each installment. (Rev. & Tax. Code, § 25952.)

In previous appeals, we have held that every corporation must pay at least the minimum estimated tax of \$200 by the first installment date (the 15th day of the 4th month of the income year) to avoid the **imposition**

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of any penalties. (Appeal of Durao International Corporation, Cal. St. Bd. of Equal., May 21, 1980; Appeal of Lumbermans Mortgage Company, St. Bd. of Equal., Dec. 15, 1976.) This remains the case even if the taxpayer has generated no income in the first quarter of its income year. (See Appeal of Durao International Corporation, supra.)

Appellant argues, however, that since the minimum estimated tax for its 14 subsidiary corporations was in excess of \$200 (\$2,800 for the 14 corporations), it was not required, pursuant to Revenue and Taxation Code section 25563, subdivision (c), to pay the minimum estimated tax payment of \$200 for each of the 14 subsidiaries by its first installment date of October 15, 1979, in order to avoid penalties. We do not find appellant's argument to be persuasive. Appellant has cited no authority, nor are we aware of any, for the proposition that a corporation is excused from paying the \$200 minimum tax required pursuant to section 23153 by the first installment date merely because it constitutes a part of a unitary business which files a combined report. Accordingly, we must concur with respondent's determination that each of appellant's 14 subsidiary corporations was required to pay the \$200 minimum estimated tax by the first installment date of October 15, 1979. Since no timely payment was made, respondent properly computed the penalty in accordance with the "amount of underpayment." (See Rev. & Tax. Code, §§ 25951 & 25952.) Appellant could have avoided the penalty for underpayment of estimated tax by filing a timely declaration of estimated tax and paying the minimum tax due for its 14 subsidiary corporations. Thereafter, accepting as accurate appellant's assertion that no income was generated prior to the last quarter of the appeal year, the remedial provisions of subdivision (c)(2) of section 25954 would have been applicable to avoid any penalties. (Appeal of Lumbermans Mortgage Company, supra.)

Appellant's second argument is that subdivision (d) of section 25563, as well as parts H and I of respondent's instructions for filing bank and corporation estimated tax, found in Form 100-ES, specifically permit a corporation to make one payment of estimated tax equal to 100 percent of its estimated tax on or before the 15th day of the 12th month of its income year, in this case, June 15, 1980. Since it made such a payment on June 13, 1980, appellant concludes, it complied with the law as set forth in the cited form. Appellant's position is

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without merit. In accordance with section 25563, subdivision (d), part H of respondent's instructions provides that, for an accounting period of 12 months, the first installment of estimated tax is due on or before the 15th day of the 4th month of the income year, and that the amount payable is 25 percent of the estimated tax, but not less than the applicable minimum tax. The amount payable on the fourth installment date is 100 percent of the estimated tax less the total of the first three installments. **Part I of Form 100-ES** is not relevant to this appeal since it deals exclusively with accounting periods of less than 12 months..

For the reasons set forth above, we **conclude** that respondent's action in this matter was correct and must be sustained.

