



Appeal of Bild Industries,, Inc

Appellant, a California corporation, is an aircraft hardware wholesaler. It files its tax returns on the basis of an income year ending June 30.

The time prescribed for filing appellant's return for income year ended June 30, 1980 was September 15, 1980 (Rev. & Tax. Code § 25401). But appellant timely requested and obtained an **extension** of time until March 15, 1981, in which to file its corporate franchise tax return. The request for extension showed an expected tax liability of **\$4,216.00**. Appellant had previously paid this amount in quarterly estimated tax installments of **\$1,054.00** each, so no additional remittance accompanied the request for extension.

Appellant's return was filed within the 'extended period. That return reported a tax liability of **\$9,151.00** and a balance due in tax of **\$4,935.00**, which was paid with the return. Upon processing appellant's return, respondent assessed a penalty of \$246.75 for late payment of tax (Rev. & Tax. Code § 25934.2), together with \$149.67 in accrued interest on the unpaid tax liability. Appellant paid the additional amounts, and filed a claim for refund. Denial of the claim for refund by respondent resulted in this appeal.

Appellant contends that business matters which were unresolved on September 15, 1980, its **original** filing date, prevented an accurate determination of **its** correct tax liability, **so the** late payment of tax was due to **reasonable cause** and should be excused.

Revenue and Taxation Code Section 25551 provides:

Except as otherwise provided in this chapter, the tax imposed by this part shall be paid not later than the time fixed for filing the return (determined without regard to any extension of time for filing the return).

Revenue and Taxation Code section 25934.2 provides in relevant part:

(a) If **any** taxpayer fails to pay **the amount** of tax required to be paid under Sections 25551 and 25553 by the date prescribed therein; then unless it is shown that the failure was due to **reasonable cause** and not willful neglect, a penalty of 5 percent of the total tax unpaid as

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of the date **prescribed** in Sections **2551** and **2553** shall be due and payable upon notice. . .

Since appellant failed to pay **\$4,935.00** of its total franchise tax liability until after September 15, 1980, the time originally fixed for filing its return, the payment was late although its return was filed within the extended period. Accordingly, respondent's imposition of the penalty for late payment of tax was proper unless the untimely payment was due to reasonable cause and not due to willful neglect. Appellant bears the burden of proving that both of those **conditions** existed if it is to be relieved of the penalty.. (Rogers Hornsby, 26 B.T.A. 591 (1932): see Appeal of Telonic Altair, Inc., Cal. St. Bd. of Equal., May 4, 1978.) In order to establish reasonable cause, the taxpayer must show that its failure to act occurred **despite** the exercise of ordinary business care and prudence. (See Sanders v. Commissioner, 225 F.2d 629 (10th Cir. 1955), cert. den., 350 U.S. 967 [100 L.Ed. 8391 (1956); Appeal of Citicorp Leasing, St. Bd. of Equal., Jan. 6, 1976.)

The penalty was upheld in two similar matters where the percentages of underpayment were much less than here. In the Appeal of Cerwin-Vega International, decided August 15, 1978, the taxpayer, a domestic international sales corporation, was unable to file its return timely because federal law prevented it from then resolving certain accounting problems. Its request for an extension for filing its return was accompanied by payment of its estimated liability. **Cerwin-Vega's** return, later filed within the extended time limit for filing, showed that its previously estimated and paid liability was 16% underpaid. Inability to resolve federal tax accounting problems had no effect on **its** obligation to maintain accounting records of its California business activity although the maintenance of such separate records might have **been more** burdensome. The failure to maintain such records would presumably have enabled that taxpayer to arrive at a reasonably accurate calculation of its California franchise tax liability and to timely pay the amount due. Failure to do so demonstrated something less than ordinary business care and prudence. In the Appeal of Avco Financial Services, Inc., decided **May 9, 1979**, the taxpayer, a worldwide consumer finance company, requested an extension for filing its return. Payment of its **estimated** tax liability accompanied its request. Its return, later filed within the extended time limit, showed that its previously estimated and paid liability was only 84% of its final liability.. We concluded that the difficulty of estimating the tax-due on

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its worldwide income did not constitute reasonable cause for the underpayment.

Appellant here simply cites unresolved business matters as the reason for a 46% underpayment. We find that appellant has not demonstrated that its underpayment was due to a reasonable cause.

Accordingly, we must sustain respondent's action.

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ORDER.

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 Bild Industries, Inc. for refund of penalty and interest in the amount of \$396.42 for the income year ended June 30, 1980, be and the same is hereby sustained.

Done at Sacramento, California, **this 21st** day of **September**, 1982, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. **Collis**, Mr. Dronenburg and Mr. Nevins present.

*Sullivan by Burns A.*, Chairman  
*Michael Beer*, Member  
*Ernest Dronenburg J.*, Member  
*Cal [unclear]*, Member  
*[unclear]*, Member