



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
LA MESA ASSOCIATES, INC.)

For Appellant: Nick M. Mamaril
Controller

For Respondent: Terry Collins
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 La Mesa Associates, Inc., for refund of franchise tax in the amount of \$365.99 for the income year ended April 30, 1981.

Appeal of La Mesa Associates, Inc.

Appellant is a California corporation which reports its income for franchise tax purposes on the basis of a fiscal year ending April 30. On January 15, 1982, within an extended period granted by respondent for filing its return for the income year ended April 30, 1981, appellant reported a self-assessed tax liability of \$6,333. It then also reported estimated tax payments of \$6,990, which had been made with its application for extension, and, accordingly, requested a refund of \$657. Respondent determined that appellant was liable for a penalty of \$365.99 on the ground that it had failed to make timely payment of estimated tax. It subtracted this amount from the corporation's refund claim, and refunded the balance, plus interest. Appellant filed a claim for refund of the penalty. The claim was disallowed and this appeal followed.

The issue is whether the penalty assessed against appellant for failure to pay estimated tax was properly assessed.

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. (See Rev. & Tax. Code, **§§ 25561-25565.**)^{1/} If the estimated tax does not exceed the \$200 minimum tax, the entire amount is due and payable on or before the fifteenth day of the fourth month of the income year. (Rev. & Tax. Code, **§ 25563**, subd. (c).) If the amount of estimated tax exceeds \$200, it is payable in four equal installments. (Rev. & Tax. Code, **§ 25563**, subd. (d).) A penalty is imposed on corporations which underpay their estimated tax. (Rev. & Tax. Code, **§ 25951.**)

Since appellant reports its income on a fiscal year basis ending April 30, its payment of estimated tax for the income year ended April 30, 1981, or the first installment thereof, was due and payable on or before August 15, 1980. However, no payment of estimated tax for the income year ended April 30, 1981, was made at that time. Therefore, respondent assessed the **penalty** at issue based on appellant's total tax liability for the income year ended April 30, **1981**.

^{1/} **All** Code references are to the Revenue and Taxation Code as in effect in the year at issue.

Appeal of La Mesa Associates, Inc.

Appellant appears to argue that the penalty assessed should have been based on the \$200 minimum tax which was due, but not paid, on August 15, 1980, and not on the total tax liability for the income year ended April 30, 1981: It is appellant's apparent position that it could not have made an estimate of tax liability for the appeal year because it did not realize the bulk of its profits²⁷ for that year until the last quarter of operations.27

Section 25951 of the Revenue and Taxation Code prescribes a penalty for the underpayment of estimated tax at a rate of twelve percent of the "amount of underpayment." The "amount of underpayment" is defined as the excess of the amount of estimated tax that would be required to be paid on each installment 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.)

Appellant could have avoided the penalty for underpayment of estimated tax by filing a timely declaration of estimated tax and paying the minimum tax. Thereafter, the remedial provisions of subdivision (c)(2) of section 25954 of the Revenue and Taxation Code would have been applicable. However, since no payment was made, respondent properly computed the penalty for underpayment of estimated tax in accordance with the definition of the "amount of underpayment." (Rev. & Tax. Code, §§ 25951, 25952.)

27 Section 25954 of the Revenue and Taxation Code provides relief from the penalty in issue under certain circumstances. However, in order to obtain relief pursuant to section 25954, payment of estimated tax in an amount equal to at least the minimum tax must be made on or before the due date. (Appeal of Lumbermans Mortgage Company, Cal. St. Bd. of Equal., Dec. 15, 1976; Appeal of Uniroyal, Inc., Cal. St. Bd. of Equal., Jan. 7, 1975.) Since appellant made no payment of estimated tax for the income year ended April 30, 1981, during that year, it apparently does not seek relief pursuant to section 25954 but merely challenges the method by which respondent computed the penalty.

Appeal of La Mesa Associates, 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 La Mesa Associates, Inc., for refund of franchise tax in the amount of **\$365.99** for the income year ended April **30, 1981**, be and the same is hereby sustained.

Done at Sacramento, California, this 15th day of September, **1983**, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg, Mr. Nevins and Mr. Harvey present.

<u>William M. Bennett</u>	, Chairman
<u>Conway H. Collis</u>	, Member
<u>Ernest J. Dronenburg, Jr.</u>	, Member
<u>Richard Nevins</u>	, Member
<u>Walter Harvey*</u>	, Member

*For Kenneth Cory, per Government Code section 7.9