



BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
KROFFT ENTERTAINMENT, INC. )

For Appellant: Richard De Fronzo, Partner  
Ernst and Whinney

For Respondent: Michael R. Kelly  
C o u n s e l

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 Krofft Entertainment, Inc., for refund of franchise tax in the amount of \$21,520 for the income year ended February 28, 1981.

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Appellant concedes its liability for tax under the Bank and Corporation Tax Law of California during the year in question. The sole issue **presented** by this appeal is whether appellant's delay in filing its return for the income year at issue is due to reasonable cause.

Appellant corporation's franchise tax return for the income year ended February 28, **1981**, was due on May 15, 1981. Appellant's treasurer did not sign the return until July 28, 1981, and the return was not received by respondent until July 30, **1981**. Attached to appellant's return was an application for extension of time for filing also dated July 28, 1981. This application was **denied** by respondent as it was received after the **due date of the** return.

Respondent applied a 15 percent penalty against appellant for failing to file a **return by** the due date. Notice of the **\$17,436.90** penalty was mailed by respondent on October 31, **1981**.

Upon receipt of this notice appellant contacted respondent and asserted that the delay was due to reasonable cause as evidenced by the following: **(1)** Appellant, due to the resignation of its controller, had only one bookkeeper who was knowledgeable of the year's operations. This bookkeeper was at that time assigned additional duties relating to the production of the Barbara Mandrell Show. Consequently, the books were not closed until the middle of May **1981**. **(2)** Appellant's accountants prepared an Application for Automatic Maximum Extension of Time for Filing Return and delivered it to appellant on May 14, **1981**. Appellant was allegedly advised that the extension was being sent, but as a result of a breakdown in communications, the corporate officer who actually received the extension was unaware of its significance. **(3)** The Internal Revenue Service withdrew its penalty for late filing due to a finding of reasonable cause in this situation, and section 25931 of the Revenue and Taxation Code is substantially similar to section 6651 of the Internal Revenue Code of 1954.

Respondent found that appellant did not show that its failure to file was due to reasonable cause. The denial of appellant's claim for refund led to this appeal.

Section 25401 of the Revenue and Taxation Code provides that every corporate taxpayer must file a return with respondent within two months and fifteen days after

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the close of its income year. Appellant's **return for** the income year ended February 28, 1981, was due on May 15, 1981. Respondent is empowered by section 25402 of the Revenue and Taxation Code and section 25401 of title 18 of the California Administrative Code to grant an extension of time for filing a return. Such an extension may be granted for reasonable cause if such a request is made before the due date for filing the return. Appellant did not file its return or request an extension **by** the May 15, 1981, due date. Consequently, the provisions of section 25931 of the Revenue and Taxation Code, as cited below, are applicable:

If any taxpayer fails to make and file a return required by this part on or before the due date of the return or the due date as extended by the Franchise Tax Board, then, unless it is shown that the failure 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 thereof elapsing between the due date **of** the return and the date on which filed, but the total addition shall not exceed 25 percent of 'the tax.

In accordance with this provision, respondent assessed a 15 percent penalty against appellant as the return was filed over two months late.

There is no evidence in the record before us that there was willful neglect on the part of appellant. The only issue remaining is whether the requisite reasonable cause was present. It is well established that the burden is on the taxpayer to prove **that there was** reasonable cause for its failure, to file a timely return. (William M. Bebb, 36 T.C. 170; Appeal of American Photocopy Equipment Co., Cal. St. Bd. of Equal., Dec. 18, 1964.) "Reasonable cause," as it is used in similar federal legislation, has been construed to mean such cause as would prompt an ordinarily intelligent and prudent businessman to have so acted under similar circumstances, or the exercise of ordinary business care and prudence. (Sanders v. Commissioner, 225 F.2d 629 (10th Cir. 1955), cert. den., 350 U.S. 967 [100 L.Ed. 839] (1956); Appeal of Electrochimica. Corp., Cal. St. Bd. of Equal., Aug. 3, 1970.)

In the case at hand, appellant might well have had good reason to believe that its accounting **firm**, once requested to extend the filing period, would, in fact, be

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sure the period had been extended. However, this fact **does not** relieve appellant of the **ultimate** responsibility for the timely filing of its returns. (Cf. Appeal of Citicorp Leasing, Inc., Cal. St. Bd. of Equal., Jan. 6, 1976.) The facts show that the accountants did prepare the extension and send it to appellant. Allegedly, the extension was delivered to one of appellant's corporate officers who did not know the significance of the matter. This does not; however, excuse the corporate officer who was responsible for the matter from making sure that the extension was received timely by respondent. In our opinion, a 2-1/2 month delay in discovering the failure to file the extension does not demonstrate the exercise of ordinary care and prudence necessary to establish reasonable cause'. Likewise, the additional demands on appellant's bookkeeper due to the expansion of the business to include the Barbara Mandrell Show is not reasonable cause for failing to file the return. (See Appeal of Citicorp Leasing, Inc.; supra.)

**Finally,** appellant contends that because the Internal Revenue Service assessed a 15 percent penalty for late filing but removed the penalty upon a finding of reasonable cause, this final determination by the Internal Revenue Service in its **favor is** controlling on respondent. We do not agree. Although section 25931 of the Revenue and Taxation Code is substantially similar to section 6651(a)(1) of the Internal Revenue Code, there is no statutory authority which would require respondent to follow an Internal Revenue Service **decision which** respondent believes to be erroneous.. (Appeal of Der Wienerschnitzel International, Inc., Cal. St. Bd. of Equal., April 10, 1979.) As indicated **above,** there is ample case law to **support** respondent's position in this matter.

For **the reasons** discussed above, we must sustain respondent's imposition of the penalty in this case.

