

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
J. E. FARMER SHEET METAL,)
HEATING AND AIR)
CONDITIONING, INC.)

For Appellant: Dennis E. Armstrong
Certified Public Accountant

For Respondent: Terry Collins
Counsel

O P I N I O N

This appeal is made pursuant to section 25666 of the Revenue and Taxation Code from the action of the Franchise Tax **Board** on the protest of J. E. Farmer Sheet Metal, Heating and Air Conditioning, **Inc., against** a proposed assessment of additional franchise tax in the amount of \$8,181 for the income year 1981.

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The sole issue in this appeal is whether respondent properly disallowed appellant's contributions to its pension plan **which** were paid after the date prescribed for filing its corporation franchise tax return.

On March 12, 1982, appellant filed an unsigned 'Application for Automatic Extension of Time for Filing Return' (FTB 3504) for the income year 1981. Appellant declared \$1,063 of estimated tax, but actually paid only \$823 of that amount. On March 25, 1982, respondent denied the 'extension request **because appellant** had not paid all of the estimated tax declared for income year 1981; as required by statute. Respondent later learned that the full amount of estimated tax was not paid because appellant erroneously characterized a \$240 payment made in March 1981 with the 1980 income year's extension request as a payment of tax for the 1981 income year. Appellant did not correct this defect and appellant did not file its franchise tax return within the **10-day** filing period allowed by the Franchise Tax Board after the denial of the extension request.

On July 12, 1982, appellant filed its "Corporate **Franchise or Income** Tax Return" (Form 100). The July 12, 1982, return included a deduction for a pension contribution of \$85,220. Thereafter, respondent requested additional information regarding the pension contribution, and appellant sent copies of checks showing pension contributions were paid on May 11, June 2, and June 3, 1982. The due date of the return was April 5, 1982, ten days after the extension request was denied. **The** contributions were made after the return due date; therefore, appellant's pension contribution deduction was disallowed on a "Notice of Additional Tax Proposed 'to be Assessed'" (NPA) dated November 21, 1983. This resulted in a proposed assessment of additional tax of \$8,131, the amount in issue.

On January 17, 1984, appellant protested respondent's proposed assessment on the grounds that the pension contribution deduction should be allowed because a bookkeeping error resulted in the defective extension request and, therefore, the extension should have been allowed.

After reviewing appellant's protest, respondent affirmed its proposed assessment because the pension contribution was made after the due date of the 1981 franchise tax return. A late filing penalty was not

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assessed because the prepaid tax exceeded the tax shown on the return. Thereafter, appellant filed this timely appeal.

Respondent submits that the 'denial of **the** defective request for an automatic extension of time to file the return was proper and mandatory as a matter of law: therefore, the due date for the return was April 5, 1982. Respondent notes that in order to be granted an extension, a taxpayer must meet all of the requirements of Revenue and Taxation Code section 25402, subdivision (b), which provides: (1) the **correct form** (FTB 3504) must be filed; (2) the form must be filed on or before the due date of the return, and (3) the corporation must pay all of the tax that it expects will be ultimately due on **or before** the original due date of the return.

Appellant submits that its extension request should be granted because its failure to properly estimate the amount of tax was due to reasonable cause and not willful neglect. It points out that pursuant to Revenue and Taxation Code section 25402, subdivision (a), respondent may grant a reasonable extension of time for filing any return, declaration, statement, or other document and that Revenue and Taxation Code section 25402, subdivision (b), provides that respondent shall grant a taxpayer a seven-month extension of time for filing its tax return if the taxpayer has paid the amount of tax properly estimated to be due for the income year.

Appellant concedes that it failed to pay the "properly estimated" tax at the time it filed the extension request; however, it submits that there was reasonable cause for this failure and that, therefore, the extension should have been granted.

Briefly summarized, there are two reasons advanced by appellant for its failure to properly estimate the tax: (1) a clerical error which showed estimated tax payments of \$720 rather than \$480; and (2) both the bookkeeper and the corporate secretary responsible for preparing the return were new to the company.

Appellant submits that reasonable cause will be found to exist if the taxpayer has exercised such care as would prompt an ordinarily intelligent and prudent businessman to have so acted under similar circumstances. **Appellant** believes that its employees did exercise ordinary business care and prudence in preparing the

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extension request and that a reasonable mistake was made.

Assuming, arguendo, that the concept of reasonable cause is even relevant to this appeal, we note that in **prior appeals**, we have consistently held that the reasons cited by appellant do not constitute reasonable cause. (Appeal-of-Breneman, Inc., Cal. St. Bd. of Equal., Oct. 28, 1980; Appeal of Telonic Altair, Inc., Cal. St. Bd. of Equal., May 4, 1978; Appeal of Electrochimica Corp., Cal. St. Bd. of Equal., Aug. 3, 1970.) In the Appeal of Telonic Altair, Inc., *supra*, we concluded that a clerical mistake **or oversight did** not constitute reasonable cause. In the Appeal of Electrochimica Corp., *supra*, we decided that personnel turnover and inexperience of new employees did not constitute reasonable cause for filing a late return. For the reasons set forth in those decisions, we conclude that appellant's failure to pay the "properly estimated" tax at the time it filed the extension request was not due to reasonable cause.

Under the circumstances presented by this appeal, we must conclude **that appellant's** extension request was properly denied and that respondent's actions in disallowing appellant's contributions to its pension plan which were paid after the date prescribed for filing its corporation franchise tax return were proper and must be sustained.

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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 25667 of the Revenue and Taxation Code, that the action of the Franchise Tax -Board on the protest of J. E. Farmer Sheet Metal, Heating and Air Conditioning, Inc., against a proposed assessment of additional franchise tax in the amount of \$8,181 for the income year 1981, be and the same is hereby sustained. .

Done at Sacramento, California, this 9th day of April , 1985, by the State Board of Equalization, with Board Members Mr. Dronenburg, Mr. Collis, Mr. Nevins and Mr. Harvey present.

_____, Chairman

Conway H. Collis _____, Member

Richard Nevins _____, Member

Walter Harvey* _____, Member
_____, Member

*For Kenneth Cory, per Government Code section 7.9