

Appeal of Loew's San Francisco Hotel Corp.

August 31 and the last day for filing a return is November 15. On November 11, 1969, prior to the due date for its 1968 return appellant requested **and** was granted an extension of time in which to file until May 15, 1970. Notwithstanding the six-month extension of time appellant did not file its return until June 12, 1970, one month late. Respondent assessed the 5 percent late filing penalty prescribed by section 25931 of the Revenue and Taxation Code.

In its return for the income year 1971, filed May 10, 1972, appellant claimed a refund of tax in the amount of **\$50,925.00**. Respondent granted the claim but asserted its right to offset the **\$2,033.79** late filing penalty due from appellant for the income year **1968**. Appellant appealed from this partial denial of the refund claim. The propriety of imposing this penalty is the sole issue for determination.

Section 25931 of the Revenue and Taxation Code **provides** that if a taxpayer fails to *file a timely return a 5 percent penalty per month shall be added to the tax unless the failure to file was due to reasonable cause and not willful neglect. In the instant matter appellant contends that its failure to file a timely return was due to reasonable cause and not willful neglect: therefore, the penalty should be abated.

In support of its position appellant relies on alleged abnormal conditions flowing from **the** merger of **Lorillard** Corporation into **Loew's** Theatres, Inc., **appellant's parent**, on July 10, 1969. We are told that subsequent to the merger, Lorillard's tax department became responsible for filing the additional state **income** and franchise tax returns. Appellant also stated that the adoption of a new **fiscal year** and the inclusion of Lorillard in Loew's consolidated federal income tax return **imposed** additional pressure on the tax department. Additionally, **the merger** required that Lorillard's tax **department physically move to** a new location in **January** 1970. According to appellant, this overall consolidation

Appeal of Loew's San Francisco Hotel Corp.

had a substantially adverse effect on personnel and necessitated additional time being spent in combining procedure, tax calendars, and files in order to develop a systematic and effective work pattern.

Reasonable cause which will excuse a taxpayer's failure to file a timely return means nothing more than the exercise of ordinary business care and prudence, or such cause as would prompt an ordinarily intelligent and prudent businessman to have so acted under similar circumstances. (Sanders v. Commissioner, 225 F.2d 629, 636; Hatfried, Inc. v. Commissioner, 162 F.2d 623; Appeal of J. B. Ferguson, Cal. St. Bd. of Equal., Sept. 15, 1958.) Appellant's position, in substance, is that it failed to file a timely return because of business pressures brought about by the corporate merger of its parent and Lorillard. In other words appellant and its parent were too busy to file a timely franchise tax return. However, being too busy is an insufficient reason to relieve a taxpayer of its statutory obligation to file a timely tax return: (First County National Bank & Trust Co. of Woodbury, New Jersey v. United States, 291 F. Supp. 837; Herbert W. Dustin, 53 T.C. 491.)

It is understandable that appellant was concerned about the pending merger and consolidation of the corporate tax departments and the administrative difficulties arising therefrom. However, the filing of a timely franchise tax return is also a matter of importance. (Calvert Iron Works, Inc., 26 T.C. 770, 782.) If appellant chooses to sacrifice the timeliness of one aspect of its business affairs in order to pursue other endeavors, it must bear the consequences. (Appeal of William T. and Joy P. Orr, Cal. St. Bd. of Equal., Feb. 5, 1968.)

Accordingly, it must be concluded that appellant's failure to file a timely return was not due to reasonable cause. Therefore, respondent properly assessed the penalty for late filing and its action must be sustained.

