



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
 UNIROYAL, INC.)

For Appellant: C. V. Mannella
Director, Tax Department

For Respondent: Crawford H. Thomas
Chief Counsel

Kendall Kinyon
Counsel

OPINION

This appeal is made pursuant to section 26077 of the Revenue and Taxation Code from the action of the Franchise Tax Board in partially denying (to the extent of \$1,499. 49) the claim of Uniroyal, Inc., for refund of franchise tax in the amount of \$2,104.35 for the income year 1971.

The issue is whether Uniroyal, Inc., is liable for a penalty for failure to pay estimated tax when due.

Appeal of Uniroyal, Inc.

Appellant Uniroyal, Inc., is a New Jersey corporation doing business in California. It reports its income for California franchise tax purposes on a calendar year basis. On or before September 15, 1971, appellant filed a franchise tax return for the income year 1970 which reflected a total tax liability of \$100.00.

For the income year 1971, appellant claims to have filed on June 7, 1971, a declaration showing \$100.00 estimated tax. Respondent has no record of any payment of estimated tax on that date, however, and appellant has failed to produce any evidence of such payment.

Appellant made an \$80,000.00 payment of estimated tax for the 1971 income year on March 13, 1972. It later filed a franchise tax return for the 1971 income year on which it calculated its tax liability to be \$77,895.65, and accordingly requested a refund of \$2,104.35. Respondent determined that appellant was liable for a penalty of \$1,499.49, 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 does not contest the amount of the penalty as computed by respondent, but argues that no penalty at all should have been imposed.

Revenue and Taxation Code section 25441, subdivision (a), requires every taxpayer subject to the bank and corporation tax to file a declaration of estimated tax within 5 months and 15 days after the beginning of its income year. Section 25563, insofar as it is relevant to the income year here in question, provides that either the total estimated tax, or a portion thereof if the estimated tax exceeds \$100, shall be due and payable on or before the fifteenth day of the sixth month of the taxpayer's income year. Section 25951 imposes a penalty on corporations which underpay their estimated tax.

Appellant reports its income on a calendar year basis. Therefore, its payment of estimated tax for the income year 1971, or at least the first installment thereof, was due on or before June 15 of that year. Respondent determined that no such payment had been made until March 13, 1972, the date of the \$80,000.00 payment, and accordingly assessed a penalty. On the basis of the record before us, we cannot say that this action was incorrect.

Appeal of Uniroyal, Inc.

Appellant seeks relief from the penalty, however, under Revenue and Taxation Code section 25954, which reads in pertinent part:

Notwithstanding the provisions of the preceding sections of this article, the addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax paid on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the lesser--

- (a) The tax shown on the return of the taxpayer for the preceding income year. ...
- (b) An amount equal to the tax computed at the rates applicable to the taxable year but otherwise on the basis of the facts shown on the return of the taxpayer for-, and the law applicable to, the preceding taxable year.
- (c)(1) With respect to payments of estimated tax required to be paid during income years ending on or before November 30, 1972, an amount equal to 80 percent of the tax for the taxable year computed by placing on an annualized basis the taxable income for the first three months or for the first five months of the income year. (Emphasis added.)

Appellant argues that since the tax liability shown on its return for the 1970 income year was \$100, only \$1.00 estimated tax was due for the 1971 income year. The fact remains, however, that to escape imposition of the penalty, payment of some amount as estimated tax must be made on or before the date it becomes due. There is nothing in the record in this case to show that any such payment was made. Furthermore, on its return for the 1971 income year, appellant did not claim credit for any such payment. We therefore conclude that appellant does not come within the provisions of section 25954.

Appeal of Uniroyal, Inc.

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 partially denying (to the extent of \$1,499.49) the claim of Uniroyal, Inc., for refund of franchise tax in the amount of \$2,104.35 for the income year 1971, be and the same is hereby sustained,

Done at Sacramento, California, this 7th day of January, 1975 by the State Board of Equalization.

John W. Lynch, Chairman

_____. Member

William B. Berke, Member

George R. Kelly, Member

George R. Kelly, Member

ATTEST: W. W. Ruelap, Secretary