



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

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

For Appellant: R. D. Bar-wick
Vice President - Finance

For Respondent: Bruce W. Walker
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 denying, to the extent of \$260.42, the claim of Decoa, Inc. , for refund of franchise tax in the amount of \$871.00 for the income year 1973.

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Appellant is a Florida corporation that began doing business in California in 1973. For franchise tax purposes appellant elected to file its returns on a calendar year basis. On March 15, 1974, appellant requested an extension of time to file its return for the 1973 income year, and paid an estimated tax liability of \$9,851.00. Appellant filed a timely return on or about April 15, 1974, reflecting an actual tax liability for 1973 of \$8,980.00 and an overpayment of \$871.00. Upon receipt of the return, respondent assessed a penalty of \$260.42 for underpayment of estimated tax for the 1973 income year, and deducted that amount from the refund due appellant. Whether that penalty was properly assessed is the only issue presented.

In the case of general corporations such as appellant, the term "estimated tax" means the amount which the corporation estimates as its franchise tax liability, but in no event less than \$100. (Rev. & Tax. Code, § 25561.) Payment of the estimated tax is governed by Revenue and Taxation Code section 25563. Respondent states, and appellant does not dispute, that under subdivision (d) of section 25563, appellant was required to make estimated tax payments equal to its self-determined tax liability of \$8,980.00 in four equal installments of \$2,245.00 each on April 15, June 15, September 15, and December 15, 1973. Admittedly, however, no payment was made until March 15, 1974.

The penalty for underpayment of estimated tax is imposed by section 25951, which states:

In case of any underpayment of estimated tax, except as provided in Section 25954, there shall be added to the tax for the taxable year an amount determined at the rate of 6 percent per annum upon the amount of underpayment (determined under Section 25952) for the period of the underpayment (determined under Section 25953). (Emphasis added.)

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Since appellant does not question respondent's computation of the amount or period of the underpayment, the penalty in issue is proper unless appellant qualifies for relief under section 25954. That section provides that the penalty shall not be imposed if the total amount of estimated tax payments made by each installment due date equals or exceeds the amount that would have been due by such date if the estimated tax were the lesser of:

- (a) the tax shown on the taxpayer's return for the preceding income year;
- (b) the tax computed at the rates for the current taxable year but otherwise on the basis of the facts and law applicable to the return for the preceding taxable year; or
- (c) for income years beginning after December 31, 1971, an amount equal to 80% of the tax for the taxable year computed by placing on an annualized basis the taxable income for stated periods of the income year preceding each estimated tax installment due date.

Appellant does not expressly contend that any of the above exceptions is applicable, but rather argues that it should be relieved of the penalty because, as a practical matter, it had no basis upon which to compute its estimated tax liability. It points out that it could not make a computation based on its return for the previous year, since such a return had not been filed and was not required to be filed. In addition, appellant says that it was impossible to estimate the amount of unitary income attributable to California for 1973 until the end of the year. The thrust of these statements appears to be that there were "extenuating circumstances" which should excuse appellant from the penalty. It is settled law, however, that relief from the penalty for underpayment of estimated tax is not available upon a showing of reasonable cause and lack of willful neglect, or extenuating circumstances. (Appeal of Alden Schloss, Cal. St. Bd. of Equal., Oct. 27, 1971; Estate of Barney Ruben, 33 T. C. 1071; Marko Durovic, 54 T. C. 1364, 1400.)

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This is the rule even in cases, where, at the time the estimate must be made, the taxpayer lacks the information necessary to estimate his income accurately. (Appeal of Alden Schloss, supra.) The penalty may be excused only if the taxpayer comes within one of the exceptions set forth in section 25954, which appellant does not.

On the record before us, we can find no error in respondent's -assessment of the penalty.

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,

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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, to the extent of \$260.42, the claim of Decoa, Inc., for refund of franchise tax in the amount of \$871.00 for the income year 1973, be and the same is hereby sustained.

Done at Sacramento, California, this 5th day of April, 1976, by the State Board of Equalization.

William L. Burch, Chairman
George R. Kelley, Member
Paul J. ..., Member
_____, Member
_____, Member

ATTEST: *W. W. ...*, Executive Secretary