

Appeal of Lumbermans Mortgage Company

Appellant is a California corporation which reports its income for franchise tax purposes on a calendar year basis. For income year 1973 appellant filed a timely franchise tax return reflecting a tax liability of \$66,932. No estimated tax payments for the 1973 income year were ever made. Respondent assessed a penalty for underpayment of estimated tax which was paid by appellant. Thereafter, appellant filed a claim for refund of the major portion of the penalty. The claim was disallowed and this appeal followed.

The issue is whether the penalty assessed against appellant for failure to pay estimated tax was properly computed.

Every corporation subject to the franchise tax is required to file a declaration of estimated tax and pay the estimated tax during the income year. (See Rev. & Tax. Code, §§ 25561-25565.) If the estimated tax does not exceed the \$200 minimum tax, the entire amount is due and payable on or before the fifteenth day of the fourth month of the income year. (Rev. & Tax. Code, § 25563, subd. (c).) If the amount of estimated tax exceeds \$200, it is payable in four equal installments. (Rev. & Tax. Code, § 25563, subd. (d).) A penalty is imposed on corporations which underpay their estimated tax. (Rev. & Tax. Code, § 25951.)

Since appellant reports its income on a calendar year basis, its payment of estimated tax for the income year 1973, or the first installment thereof, was due and payable on or before April 15, of that year. However, no payment of estimated tax for the income year 1973 was made at that time or at any other time. Therefore, respondent assessed the penalty at issue based on appellant's total tax liability for the income year 1973.

Appellant argues that the penalty assessed should have been based on the \$200 minimum tax which was due, but not paid, on April 15, 1973, and not on the total tax liability for the 1973 income year. It is appellant's position that it could not have made an

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estimate of tax liability for 1973 because it did not realize the bulk of its profits for 1973 until December 31, two ~~weeks~~¹ after the final installment of estimated tax was due.

Section 25951 of the Revenue and Taxation Code prescribes a penalty for the underpayment of estimated tax at a rate of six percent of the "amount of underpayment." The "amount of underpayment" is defined as the excess of the amount of estimated tax that would be required to be paid on each installment if the estimated tax were equal to 80 percent of the tax shown on the return for the income year, over the amount actually paid on or before the due date of each installment. (Rev. & Tax. Code, § 25952.2)

Appellant could have avoided the penalty for underpayment of estimated tax by filing a timely declaration of estimated tax and paying the minimum tax. Thereafter, since appellant generated no income before the first day of the twelfth month, the remedial provisions of subdivision (c) (2) of section 25954 of the Revenue and Taxation Code would have been applicable. However, since no payment was made, respondent properly computed the penalty for underpayment of estimated tax in accordance with the definition of the "amount of underpayment". (Rev. & Tax., Code, §§ 25951, 25952.)

1/ Section 25954 of the Revenue and Taxation Code provides relief from the penalty in issue under certain circumstances. However, in order to obtain relief pursuant to section 25954 payment of estimated tax in an amount equal to at least the minimum tax must be made on or before the due date. (Appeal of Uniroyal, Inc., Cal. St. Bd. of Equal., Jan. 7, 1975.) Since appellant made no payment of estimated tax for 1973, it apparently does not seek relief pursuant to section 25954 but merely challenges the method by which respondent computed the penalty.

We conclude that respondent's action in this matter was correct and must be sustained.

Pursuant to the views expressed in the opinion of the board on file in ~~this~~ proceeding, and good cause appearing therefor,

Done at Sacramento, California, this 15th day of
December, 19'16, by the State Board of Equalization.

ATTEST: W. H. Campbell, Executive Secretary