



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
KERR GLASS MANUFACTURING CORPORATION)

Appearances:

For Appellant: R. E. Thompson
Corporate Tax Manager

For Respondent: Kendall E. Kinyon
Counsel

O P I N I O N

This appeal is made pursuant to section 26077 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Kerr Glass Manufacturing Corporation for refund of penalty in the amount of \$1,048.70 for the income year 1975.

Appeal of Kerr Glass Manufacturing Corporation

The question presented is whether a penalty for underpayment of estimated tax for the income year 1975 was properly imposed against appellant.

Appellant, a Delaware corporation, began doing business in California in 1927. It files its California franchise tax returns on a calendar year basis. In its timely filed return for the income year 1975, appellant reported a self-assessed franchise tax liability of \$119,735.00. In that return appellant also indicated it had made tax prepayments totalling \$36,077.40 during 1975, and had paid an additional \$86,123.00 on March 11, 1976, with its application for an extension of time to file. Appellant requested a refund of \$2,465.40, the difference between its reported franchise tax liability for the income year 1975 and its total prepayments with respect to that year.

Respondent's review of appellant's account disclosed that its prepayments of tax in 1975 had been made in the following manner:

<u>Nature of Payment</u>	<u>Date Paid</u>	<u>Amount</u>	<u>Cumulative</u>
Overpayment of tax from 1974 return	4/15/75	\$ 77.40	\$ 77.40
Estimated tax-1975			
1st installment	4/15/75	8,000.00	8,077.40
2nd installment	6/9/75	10,000.00	18,077.40
3rd installment	9/15/75	9,000.00	27,077.40
4th installment	12/15/75	9,000.00	36,077.40
Payment with extension request	3/11/76	86,123.00	122,200.40

On the basis of the above schedule, respondent determined that appellant was subject to a penalty in the amount of \$1,048.70 for underpayment of the first installment of estimated tax due for the 1975 income year. Accordingly, respondent deducted the amount of the penalty from the refund otherwise due appellant. Thereafter appellant filed a supplemental claim for refund of the \$1,048.70, contending that the penalty had been improperly imposed. Respondent's denial of that refund claim gave rise to this appeal.

Respondent has properly computed the amount of the penalty assessment. As stated above, appellant's self-determined franchise tax liability for its 1975 income year was \$119,735.00. Under the corporate estimated

Appeal of Kerr Glass Manufacturing Corporation

tax provisions of Revenue and Taxation Code sections 25561 and 25563, subdivision (d), appellant was required to estimate and prepay that amount in four equal installments of \$29,933.75 on April 15, 1975, June 15, 1975, September 15, 1975, and December 15, 1975. None of the separate prepayments made by appellant during 1975 exceeded \$10,000.00.

A penalty for underpayment of estimated tax is imposed by section 25951 of the Revenue and Taxation Code, 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 12 percent Per annum [6 percent per annum prior to January 1, 1976] upon the amount of underpayment (determined under Section 25952) for the period of the underpayment (determined under Section 25953).

Under section 25952 there is no "underpayment" of estimated tax if the taxpayer has paid 80 percent of each installment otherwise due on each of the prescribed dates. Thus, if appellant herein had made timely estimated tax payments in the amounts of at least \$23,947 (80% of \$29,933.75), there would have been no underpayment. As we have seen, however, none of appellant's prepayments of tax in 1975 exceeded \$10,000.00.

The period of the underpayment runs from the installment due date to the date of payment or the return filing date, whichever is earlier. (Rev. & Tax. Code, § 25953.) No amount of any prepayment will be applied to any previous underpayment of estimated tax, except to the extent such payment exceeds 80 percent of the installment then due. ^{1/} (Rev. & Tax. Code, § 25953, subd. (b).) Under these provisions, respondent correctly determined that the period of underpayment of appellant's estimated

1/ Note that the installment then due is the amount determined under subdivision (a) of section 25952, based upon the actual tax liability shown on the return for the income year, not that of the preceding income year.

Appeal of Kerr Glass Manufacturing Corporation

tax ran from April 15, 1975, the due date! of the installment, to March 11, 1976, the date appellant paid the \$86,123.00. ^{2/}

It therefore appears that the **penalty** here in issue was properly computed and assessed, unless appellant qualifies for relief under section 25954 of the Revenue and Taxation Code. That section provides, in substance, that no penalty will 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 **pre:ceding** taxable year; or

(c) for income years beginning after December 31, 1971, an amount equal to 80 percent 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 contends that it qualifies for relief from the penalty assessment under subdivision (a) above. It bases this contention on the fact that by December 15, 1975, its **total** prepayments of estimated tax in 1975 exceeded its **franchise** tax liability for the preceding income year. Although that is an accurate factual statement, it does not meet the statutory requirements for relief from the penalty. In order for subdivision (a) of section 25954 to apply, it must be determined that the estimated payments made during each installment period equaled or exceeded the amount which would have

^{2/} The penalty on the underpayment was computed at the **rate** of 6 **percent** per annum through December 31, 1975, and at the rate of 12 percent per annum thereafter.

Appeal of Kerr Glass Manufacturing Corporation

been due by the end of each instalment period if the estimated tax were that shown on the taxpayer's return for the preceding income year. In the instant case, the tax shown on appellant's return for the income year 1974 was \$35,423. Under the subdivision (a) exception, the amount of estimated tax due on or before the end of each installment period was therefore \$8,855.75, and the cumulative amounts due by the respective installment dates were \$8,855.75, \$17,711.50, \$26,567.25, and \$35,423.00. Appellant's estimated tax payment of \$8,000.00 on April 15, 1975, plus the \$77.40 overpayment of tax for the income year 1974 allowable as a credit, totalled less than \$8,855.75, the amount of estimated tax due by April 15, 1975, the end of the installment period. That being so, with respect to that first installment, appellant did not meet the penalty relief requirements of subdivision (a) of section 25954. ^{3/}

On the record before us, subdivision (a) of section 25954 is the only exception which could be applied in this case. Since we have found that appellant failed to meet its provisions, we must conclude that the penalty for underpayment of the first installment of estimated tax, as computed by respondent, was properly asserted against appellant for its income year 1975.

^{3/} By its second, third and fourth installment payments on June 9, 1975, September 15, 1975, and December 15, 1975, appellant exceeded the cumulative amounts due on those dates, and respondent properly determined that no penalty applied for those installment periods.

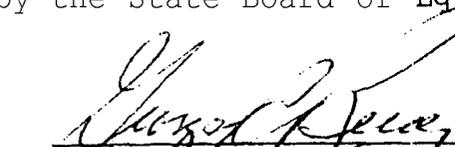
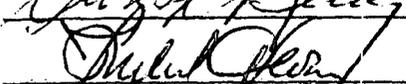
Appeal-of Kerr Glass Manufacturing Corporation

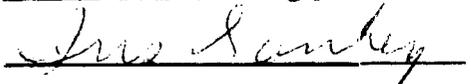
O R D E R

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 26077 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Kerr Glass Manufacturing Corporation for refund of penalty in the amount of \$1,048.70 for the income year 1975, be and the same is hereby sustained.

Done at Sacramento, California, this 26th day of July, 1978, by the State Board of Equalization.


_____, Chairman

_____, Member

_____, Member

_____, Member
_____, Member