

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
J. F. SHEA CO., INC.)

For Appellant: Jerry Brolin
Secretary-Treasurer

For Respondent: Claudia K. Land
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 J. F. Shea Co., Inc., for refund of franchise tax in the amount of \$8,585.95 for the income year 1976.

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The sole issue for determination is whether a **penalty** for underpayment of estimated tax for the income year **1976** was properly assessed.

Appellant, a Nevada corporation whose principal business activity is construction, commenced doing business in California in 1959. It files its franchise tax return on a calendar year basis.

For income year 1975, appellant was granted an extension of time until June 15, 1976, to file **its** franchise tax return. The return was timely filed within the extension period and disclosed a tax liability of **\$197,553.00** for income year 1975. On April 15, 1976, appellant made its first estimated tax payment of **\$48,250.00** against its projected tax liability for income-year 1976. Six days later, on April 21, 1976, appellant was informed by a joint venture that 1975 income of **\$100,306.00** had been credited to its capital account. This income was included in appellant's 1975 return which, as noted above, reflected a total liability of **\$197,553.00**. However, this information was not available when appellant prepared and **sub-**mitted its first estimated tax payment for income year 1976. Appellant's franchise tax return for the 1976 income year disclosed a liability of **\$632,203.00**. Respondent determined that appellant's first estimated tax installment of **\$48,250.00** for income year 1976 was insufficient. The payment should have been **\$49,388.25** (25 percent of 1975 income which was **\$197,553**), or **\$1,138.25** more than was in fact paid at the time. Accordingly, pursuant to **section** 25951 of the Revenue and Taxation Code, respondent assessed a penalty of **\$8,585.95** (12 percent per annum times the amount of the underpayment). Appellant paid this amount and filed a claim for refund of the penalty contending that its estimate was based upon the preceding year's liability and that it was unaware of the additional **\$100,306.00** joint venture income for 1975 at the time it submitted its first estimated payment. Respondent denied the claim on the basis that the penalty is mandatory and appellant did not come within any of the statutory exceptions. This appeal followed.

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. (Rev. & Tax. Code, **§§** 25561-25565.) If the amount of estimated

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tax exceeds \$200.00, it is payable in four equal installments. (Rev. & Tax. Code, § 25563, subd. (d).) A penalty is imposed on corporations which underpay their estimated tax by section 25951, which provides:

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 upon the amount of underpayment (determined under Section 25952) for the period of the underpayment (determined under Section 25953).

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.)

Since appellant does not question respondent's computation of the amount or the period of the underpayment, the penalty in question is proper unless appellant qualifies for relief under section 25954. For purposes of this appeal section 25954 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; or (b) 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 does not expressly contend that it comes within either of the above exceptions. Instead, it maintains that the amount of the penalty is inequitable under the facts. Appellant argues that had it been in a position to file a 1975 return without requesting an extension its tax would have been **\$192,743.00** instead of **\$197,553.00** since it would not have been aware of the additional income from the joint venture. Therefore, appellant concludes that the first installment of 1976 estimated tax would have been in the correct amount.

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We are not unsympathetic to appellant's position in view of the fact that the underpayment of one estimated tax installment by a mere \$1,100.00 resulted in the imposition of a penalty in excess of \$8,500.00. However, appellant clearly does not come within the statutory exceptions set out in section 25954 and has cited no authority to support its equitable plea. In effect, appellant's position is that there were "extenuating circumstances" or "reasonable cause" which should excuse it from the penalty. It is well settled, however, that relief **from** the penalty for underpayment of estimated tax is not available upon a showing of reasonable cause, lack of willful neglect, or extenuating circumstances. (Appeal of Decoa, Inc., Cal. St. Bd. of Equal., April 5, 1976.) 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 Decoa, Inc., *supra.*) Under present law the penalty may be excused only if the taxpayer comes within one of the exceptions set out in section 25954. Since appellant does not come within any of these exceptions respondent's action in this matter must be sustained.

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 the claim of J. F. Shea Co., Inc., for refund of franchise tax in the amount of \$8,585.95 for the income year 1976, be and the same is hereby sustained.

Done at Sacramento, California, this 16th day of August , 1979, by the State Board of Equalization.

William W. Bennett, Chairman

Lucretia Monahan, Member

Paul H. Hering, Member

George K. Kelly, Member

_____, Member