

Appeal of Allegheny Ludlum Industries, Inc.

Appellant, a Pennsylvania corporation, files its California franchise tax returns on the basis of the calendar year. On its return for the income year 1977, appellant reflected a tax liability of \$10,735, an estimated tax payment of \$200, a payment made with its filing extension request of \$11,800, and requested a refund of the \$1,265 balance. Respondent determined that appellant's \$200 estimated tax payment **was** not received until December 12, 1977, just before the fourth installment due date. The \$11,800 payment which accompanied the filing extension request was received by respondent on March 15, 1978. Based on **this** information, respondent determined that appellant had underpaid its 1977 estimated tax and assessed the penalty in issue. In accordance with this determination, respondent denied appellant's refund claim to the extent of the estimated tax penalty. Appellant has appealed that determination.

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.) In no event shall a **corporation's** estimated tax be less than the minimum tax. (Rev. & Tax. Code, § 25561.) If the amount of estimated tax exceeds \$200, it is payable in four equal installments. (Rev. & Tax. Code, § 25563, subd. (d) .) If it does not exceed \$200, the estimated tax is payable on or before the 15th day of the fourth month of the income year. (Rev. & Tax. Code, § 25563, subd. (c) .) Corporations which underpay their estimated tax are subject to a penalty. (Rev. & Tax. Code, §§ 25951-25953.)

Appellant's liability for the income year 1977 was \$10,735. In order to avoid a penalty, appellant was required to estimate and prepay at least 80 percent of \$10,735 (\$8,588) in four equal installments of \$2,147 on April 15, June 15, September 15 and December 15, 1977. (See Rev. & Tax. Code, §§ 25561, 25563 & 25952.) Since the payments made on or before each of the installment **due dates** were less than \$2,147, appellant is subject to the estimated tax penalty imposed by section 25951 of the Revenue and Taxation Code unless it is excepted from the penalty by one of the relief provisions contained in section 25954.

It is appellant's position that, since it reflected a zero tax liability on its 1976 return, it is excepted from the underpayment penalty by the prior-year exception provided in subdivision (a) of section 25954. Respondent argues that appellant's 1976 tax was \$200, the minimum tax, and concludes that the penalty exception contained in subdivision (a) does not apply.

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Subdivision (a) of section 25954 reads, in pertinent part, as follows:

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 if a return showing a liability for tax was filed by the taxpayer for the preceding year and such preceding year was a year of 12 months,
(Emphasis added.)

Resolution of the dispute in this appeal revolves around the interpretation of the phrase "tax shown on the return." Respondent's position is that the "tax shown on the return" means the mathematically correct tax. (See FTB LR 384, April 1, 1975.) This interpretation is consistent with the Internal Revenue Service's interpretation of the same phrase and is supported by respondent's regulations interpreting the term "tax" for purpose of the section 25954 penalty exceptions which provide:

. . . the term "tax" means the tax imposed by Sections 23151, 23153, 23181 or 23183 of the Bank and Corporation Tax Law, whichever is applicable. (Cal. Admin. Code, tit. 18, reg. 25951-25957, subd. (c)(2).)

Section 23151 provides that for income years beginning after December 31, 1971, every corporation doing business within this state shall pay an annual minimum tax of \$200 for the privilege of exercising its corporate franchise. Therefore, the mathematically correct tax shown on appellant's 1976 return, based on an income of zero, was the \$200 minimum tax imposed by section 23151. In no event shall a corporation's estimated tax be less than the minimum tax,, (Rev. & Tax. Code, § 25561.) Section 25561 required that if the 1977 estimated tax was not in excess of \$200, the entire amount

