



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
SONORA MFG. CO., Successor in)
Interest to CONSOLIDATED MFG., INC.)

For Appellant: Francis Mintz
Attorney at Law

For Respondent: Carl G. Knopke
Counsel

O P I N I O N

This appeal is made pursuant to section 25666 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Sonora Mfg. Co., successor in interest to Consolidated Mfg., Inc., against proposed assessments of additional franchise tax and penalties in the total amounts of **\$9,683.00** and **\$4,461.00** for the income years ended September 30, 1973, and September 30, 1974, respectively. Subsequent to the filing of this appeal, appellant conceded its liability for the additional franchise tax assessments against Consolidated Mfg., Inc. The only amounts remaining in issue, therefore, are penalty assessments of **\$1,862.00** and \$858.00 for the income years ended **September 30, 1973**, and September 30, 1974, respectively.

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The sole issue to be decided is whether respondent properly imposed delinquent filing penalties against appellant for the appeal years.

Appellant Sonora Mfg. Co. is the successor in interest to Consolidated Mfg., Inc. (hereafter "Consolidated"). Consolidated was incorporated on August 28, 1973, and the end of its first income year was September 30, 1973, making its California franchise tax return for that year due December 15, 1973. A return was not filed by the due date and no extension was requested.

The end of Consolidated's next income year was September 30, 1974. On November 1, 1974, before the franchise tax return due date for that year (December 15, 1974), Consolidated's corporate powers, rights and privileges were suspended for nonpayment of tax and failure to file a return, pursuant to sections 23301 and 23301.5 of the Revenue and Taxation Code. Later, on November 29, 1974, Consolidated filed for an extension of time until January 15, 1975, to file the return due December 15, 1974. The extension was denied by respondent because Consolidated was suspended. No return was filed by the due date, December 15, 1974.

On February 13, 1975, fourteen months after the due date of December 15, 1973, Consolidated filed its franchise tax return for the income year ended September 30, 1973. Also, on February 13, 1975, Consolidated filed with respondent another application for an extension until March 15, 1975, to file the return for the income year ended September 30, 1974, which had been due December 15, 1974. This extension application was also denied by respondent because Consolidated was still suspended; further, as respondent points out, since the application was filed after the due date of the return, respondent lacked the authority to grant it under the provisions of section 25402 of the Revenue and Taxation Code then in effect.

On June 15, 1975, Consolidated filed its franchise tax return for the income year ended September 30, 1974, due December 15, 1974. This was six months after the due date for the return, five months after the due date applied for in the first extension request, and three months after the due date applied for in the second extension request. On August 20, 1975, Consolidated was revived from its suspended status.

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After an audit, the Internal Revenue Service issued federal income tax deficiency assessments against Consolidated for the years here on appeal. Upon receipt of the final federal audit adjustments, respondent made corresponding changes in Consolidated's reported California franchise tax liability for those years and issued the assessments of additional tax and penalties here in question. As indicated earlier, only the delinquent filing penalties remain in issue.

Section 25931 of the Revenue and Taxation Code states, in pertinent portion:

If any taxpayer fails to make and file a return required by this part on or before the due date of the return or the due date as extended by the Franchise Tax Board, then, unless it is shown that the failure is due to reasonable **cause** and not due to willful neglect, 5 percent of the tax shall be added to the tax for each month or fraction thereof elapsing between the due date of the return and the date on which filed, but the total addition shall not exceed 25 percent of the tax.

The provisions of section 25931 are similar to those found in section 6651(a) of the Internal Revenue Code of 1954. The taxpayer has the burden of establishing reasonable cause, which is ascertained by the standard of ordinary business care and prudence. (Sanders v. Commissioner, 225 F.2d 629 (10th Cir. 1955), cert. den., 350 U.S. 967 [100 L.Ed. 8391 (1956)]; Appeal of La Salle Hotel Co., Cal. St. Bd. of Equal., Nov. 233, 1966.)

There is no dispute here that the returns in question were delinquently filed. It also is clear that Consolidated never was granted an extension of time for the filing of those returns. Therefore, unless appellant meets its burden of establishing that the delay was due to reasonable cause and not due to willful neglect, **respondent's assessment** of penalties under section 25931 of the Revenue and Taxation Code was proper.

On a number of prior occasions, we have been asked to determine whether the taxpayer has met this burden. (See, e.g., Appeal of Citicorp Leasing, Inc., Cal. St. Bd. of Equal., Jan. 6 1976; Appeal of Loew's San Francisco Hotel Corp., Cal. St. Bd. of Equal., Sept. 17, 1973; and Appeal of Electrochimica Corp., Cal. St.

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Bd. of Equal., Aug. 3, 1970.) In an effort to establish reasonable cause, appellant herein has advanced several reasons for the filing delays. It alleges that Consolidated's records were lost in a flood. It also states that Consolidated's accountant believed that timely extension requests had been made and that those requests had been granted by respondent. Finally, appellant urges that Consolidated's acquiescence in the federal audit adjustments constituted a "negotiated" settlement based upon the Internal Revenue Service's agreement not to impose a negligence penalty.

Appellant has produced no evidence to substantiate any of these contentions. On the basis of the record before us, we must conclude that appellant has failed to show that there was reasonable cause for Consolidated's failure to file timely returns for the years in question. Consequently, the penalties imposed by respondent must be sustained.

