

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
INTERNATIONAL BAY CLUBS, INC.)

For Appellant: Robert O. Basmajian
Vice President and
Treasurer

For Respondent: James T. Philbin
Supervising Counsel

O P I N I O N

This appeal is made pursuant to section 26075, subdivision (a), of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of International Bay Clubs, Inc., for refund of penalty in the amount of \$8,641.15 for the income year ended September 30, 1979.

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The sole question presented by this appeal is whether a penalty for underpayment of estimated tax was properly imposed for appellant's income year ended September 30, 1979.

Appellant, a California corporation, files its franchise tax returns on a fiscal year ending September 30. For the income year ended September 30, 1979, appellant made a timely first estimated tax payment of \$200.00 on January 15, 1979. Appellant later requested and obtained an extension of time in which to file its franchise tax return for the income year ended September 30, 1979. This request was accompanied by a payment of \$140,000.00, bringing appellant's credits for the year to \$140,200.00, its expected tax liability. When the return was later filed within the extension period, it showed a tax liability of \$141,125.00. Payment of the difference between the credits and the actual tax liability was sent with the return.

In reviewing appellant's account, respondent determined that appellant's \$200.00 estimated tax payment was insufficient, and assessed a penalty of \$8,171.76 pursuant to Revenue and Taxation Code section 25951. Appellant paid this amount; plus interest, and filed a claim for refund. When its claim was denied, appellant filed this timely appeal.

Corporations subject to the franchise tax are required to file a declaration of estimated income tax and to pay the estimated tax during the income year. (Rev. & Tax. Code, §§ 25561-25565.) If the amount of estimated tax exceeds \$200.00, it is payable in four equal installments. (Rev. & Tax. Code, § 25563, subd. (d).) A penalty for underpayment of tax is imposed by Revenue and Taxation Code 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): (Emphasis added.)

Appellant does not deny the existence of the underpayment nor question respondent's computation of the amount or period of the underpayment. . . It also does

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not claim relief under any of the 'penalty exceptions in Revenue and Taxation Code- section 25954. Instead, it contends that it should be relieved from the penalty because it has a record of **conscientiously** and timely 'filing returns and paying taxes, and the underpayment was due solely to an oversight. In essence, appellant's argument is that there were extenuating **circumstances** or reasonable cause for the underpayment which should excuse it from the, penalty.

We are certainly sympathetic with appellant's position, particularly in view of the fact that a \$3,605 underpayment has resulted in a penalty of \$8,172. It is well settled, however, that relief from the penalty is not available upon a showing of extenuating circumstances or reasonable cause. (Appeal of Weaver Equipment Company, Cal. St. Bd. of Equal., May 21, 1980) Appeal of J. F. Shea Co., Inc., Cal. St. Bd. of Equal. 7 Aug. 16, 1979; Appeal of Decoa, Inc., Cal. St. Bd. of Equal., April 5, 1976.) Under present law, the penalty may be excused only if the taxpayer comes within one of the exceptions provided in Revenue and Taxation Code section 25954. Since appellant does not come within one of these exceptions, respondent's action must be sustained.

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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 **International Bay Clubs, Inc.**, for refund of penalty in the amount of **\$8,641.15** for the income year ended September 30, 1979, be and the same is hereby sustained.

Done at Sacramento, California, this 31st day of March , 1982, by the State Board of Equalization., with Board Members Mr. Reilly, Mr. Dronenburg and Mr. Nevins present.

_____, Chairman
George R. Reilly, Member
Ernest J. Dronenburg, Jr., Member
Richard Nevins, Member
_____, Member