

Appeal of Diebold, Incorporated

The question presented is whether the Franchise Tax Board properly imposed a penalty for late payment of tax.

Appellant is an Ohio corporation which files its franchise tax returns on a calendar year basis. Appellant requested and was granted an extension of time to file its 1979 franchise tax return. By the normal filing date, appellant had made estimated tax payments in the amount of \$104,870. On August 15, 1980, within the extension period, appellant filed its return showing a self-assessed tax in the amount, of \$133,107. With the return was a payment in the amount of \$35,109 in satisfaction of the unpaid tax and accrued interest. Thereafter, respondent assessed a penalty in the amount of \$1,000 for late payment of tax pursuant to Revenue and Taxation Code, section 25934.2. Appellant protested and this appeal followed.

Revenue and Taxation Code section 25934.2 provides, in pertinent part :

(a) If any taxpayer fails to pay the amount of tax required to be paid under [Section] 25551... by the date prescribed therein, then unless it is shown that the failure was due to reasonable cause and not willful neglect, a penalty of 5 percent of the total tax unpaid as of the date prescribed in [Section] 25551... shall be due and payable upon notice and demand from the Franchise Tax Board. . . . In no case, however, may the penalty imposed under this section be less than five dollars (\$5) or more than one thousand dollars (\$1,000).

Revenue and Taxation Code section 25551 provides:

Except as otherwise provided in this chapter, the tax imposed by this part shall be paid not later than the time fixed for filing the return (determined without regard to any extension of time for filing the return).- (Emphasis added.)

The normal date prescribed for filing appellant's corporate franchise tax return for the 1979 income year was March 15, 1980. (Rev. & Tax. Code; § 25401, subd. (a) .) Although an extension had been granted for filing appellant's return, appellant's full tax liability was still due on the normal filing date. (Rev. & Tax. Code, § 25551.) On that date, \$28,237 of appellant's tax liability remained unpaid. Therefore, respondent's imposition of the penalty for late payment of tax was proper, unless such untimely payment was due to reasonable cause and not due to willful neglect. . . . Appellant bears the burden of proving that both of those conditions existed. (Appeal of Telonic Altair, Inc., Cal. St. Bd. of Equal., May 4, 1978.) In order

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to **establish** reasonable 'cause, the taxpayer must show that its failure to act occurred' despite the exercise of ordinary business care and prudence. (Appeal of Cerwin-Vega International; Cal. St. Bd. of Equal., Aug. 15, 1978; Appeal of International Wood Products Corp., Cal. St. Bd. of Equal., Feb. 19, 1974.)

Appellant submits that, because it files approximately 100 state and city income and franchise tax returns and over 250 personal property tax returns, it does not have enough time to 'research **the** tax laws, but must rely on the estimated tax instructions' issued by the various taxing entities. It contends that it relied on **respondent's** instructions for making estimated tax payments and that respondent should be precluded from imposing a penalty.

Ignorance of ' the law does not excuse compliance with statutory requirements. (See Appeal of Escondido Chamber of Commerce, Cal. St. Bd. of Equal., Sept. 17, 1973.) Appellant did not exercise **ordinary** business care and prudence when it failed to acquaint **itself** with the California tax law requirements. If appellant chose, not to spend the time on this aspect of its business, it must bear the consequences. Being too busy to ascertain legal requirements is not reasonable cause for delinquent payment **of** tax. (Cf. Appeal of Loew's San Francisco Hotel Corp., Cal. St. Bd. of Equal., Sept. 17, 1973 (late filing penalty).)

Appellant's argument. that it relied on **respondent's** instructions, which appears- to be in the nature of an estoppel argument, also fails. In **order** for the doctrine of estoppel to apply, appellant **'s** reliance on respondent **'s** representations (the estimated tax instructions) must have been reasonable and intended by the respondent. (United States v. City & County of San Francisco, 112. **F.Supp.** 451 (N.D. Cal. 1963), affd., 223 **F.2d** 737 (9th Cir. 1955), cert. den., 350 U.S. 903 [100 L.Ed. 793] (1955); Guild Wineries & Distilleries v. Land Dynamics; 103 **Cal.App.3d** 966 [163 **Cal.Rptr.** 348] (1980).) The instructions upon which **appellant** relied dealt specifically with estimated tax payments, not with the requirements of section 25551. Clearly, respondent could not have intended for those instructions to be 'relied on as a guide for filing and payment requirements other than those for estimated taxes, and we **believe** it was **unreasonable** for **appellant** to do so. The only penalty involved was for appellant's failure **to timely** pay its tax liability, as required by section 25551; Appellant has not shown that this penalty was improperly imposed and **respondent's** action, therefore,, must be sustained.

