



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
NAPP SYSTEMS (USA), INC.) NO. 82R-1978-AJ

Appearances:

For Appellant: Ray C. Allen
Certified Public Accountant

For Respondent: John A. Stilwell, Jr.
Counsel

O P I N I O N

This appeal is made pursuant to section 26075, subdivision (a), ¹ of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of NAPP Systems (USA), Inc., for refund of penalty in the amount of \$13,447.92 for the income year ended September 30, 1981.

1/ Unless otherwise specified, all section references are to sections of the Revenue and Taxation Code as in effect for the income year in issue.

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The issue presented for decision is whether the penalty for underpayment of estimated tax was properly imposed.

Appellant is an Iowa corporation which commenced doing business in California in 1972. On January 15, 1981, appellant filed its franchise tax return for the 1980 income year, reporting a net loss for the year, and claimed a refund of \$71,257. Since appellant had not paid the \$200 minimum tax for the 1980 income year, respondent reduced the claimed refund by \$200 and refunded the balance on March 5, 1981.

Appellant's franchise tax return for the income year 1981 showed a tax liability of \$231,620. Appellant had failed to make any estimated tax payments for that year; therefore, respondent imposed a penalty of **\$13,447.92** for underpayment of estimated tax under **section 25951**. Appellant paid the penalty and filed a claim for refund. Respondent denied the claim, and this appeal resulted.

Since appellant's tax liability for the 1980 income year was the minimum tax, appellant could have avoided the penalty for underpayment of estimated tax for the 1981 income year by making a \$200 estimated tax payment for that year. (Rev. & Tax. Code, § 25954(a).) Appellant argues that the \$200 estimated tax payment for the 1981 income year was due on January 15, 1981, and that, since appellant had a credit in its account on that date, section 26071 required respondent to satisfy the \$200 then due before refunding the balance of **appellant's** overpayment for the 1980 income year. Appellant contends that, therefore, it should be treated as having made the \$200 payment and that it should be relieved of the penalty for underpayment of estimated tax.

Section 25563 sets forth the basic rule regarding the payment of estimated tax. Subdivision (a) of that section provides that if a corporation's estimated tax payment is the minimum tax of \$200, the entire amount of the 'estimated tax is due and payable on or before the 15th day of the fourth month of the income year. Since every corporation doing business within California must pay at least the minimum tax (Bancontrol Systems Incorporated, Cal. St. Bd. of Equal., Nov. 17, 1982), appellant owed at least the **\$200 minimum** tax on January 15, 1981, the 15th day of the, fourth month of its 1981 income year. As of that date, appellant was owed a refund of **over** \$71,000 from the 1980 income year. We agree with appellant that section 26071 obligated respondent to

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satisfy the \$200 due from appellant before refunding its 1980 overpayment.

Section 26071 provides, in pertinent part:

If the Franchise Tax Board ... finds that there has been an overpayment of any liability imposed by this part by a taxpayer for any year for any reason, the amount of the overpayment shall be credited against any amount then due from the taxpayer and the balance refunded to the taxpayer (Emphasis added.)

The language of section 26071 differs markedly from the language of the federal statute which gives the Internal Revenue Service authority to apply an overpayment to an outstanding tax liability. Subdivision (a) of section 6402 of the Internal Revenue Code states that, "the Secretary .. may credit the amount of such overpayment . . . against any liability ... and shall . . . refund any balance" (Emphasis added.)

The language used in section 26071 leads us to conclude that respondent is obligated to satisfy any amount due by the taxpayer before issuing a refund of an overpayment. We believe, under the particular facts of this appeal, that respondent's failure to follow section 26071 should not result in a penalty being imposed against the taxpayer.

Respondent contends that it was required to refund the 1980 overpayment because appellant requested that it be refunded rather than credited to its next year's tax liability. Clearly, this is not true in light of section 26071. Respondent mistakenly relies upon the Appeal of Jhirmack Enterprises, Inc., decided by this board on December 11, 1979, in which this board held that where a taxpayer has directed application of an overpayment to a specific installment of its next year's estimated tax payment, it cannot change that direction after the due date of its return. Fundamental to our decision in the Jhirmack appeal was the fact that the taxpayer had the right to direct the Franchise Tax Board as to which installment of estimated tax should be credited with the payment, and the Franchise Tax Board had a corresponding duty to so apply the payment. In the instant appeal, respondent was not required to follow appellant's instructions to refund the entire overpayment. Regardless of appellant's instruction, section 26071 obligated respondent to credit the overpayment

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against any tax due by the taxpayer, in this case the \$200 minimum tax which was due on January 15, 1981. We conclude, therefore, that the decision in the Jhirmack appeal does not control our decision in the instant appeal.

For the above reasons, we conclude that no penalty for underpayment of estimated tax should have been imposed against appellant, and that respondent's action must be reversed.

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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 NAPP Systems (USA), Inc., for refund of penalty in the amount of **\$13,447.92** for the income year ended September 30, 1981, be and the same is hereby reversed.

Done at Sacramento, California, this 4th **day** of February , 1986, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Collis, MR. Bennett, Mr. Dronenburg and Mr. Harvey present.

_____	, Chairman
Conway H. Collis	, Member
William M. Bennett	, Member
Ernest J. Dronenburg, Jr.	, Member
Walter Harvey*	, Member

*For Kenneth Cory, per Government Code section 7.9