



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

in the Matter of the Appeal of)
VIDAL SASSOON, INC.) No. 82R-1034-MW

Appearances:

For Appellant: Terry L. Polley
Attorney at Law

For Respondent: Terry L. Collins
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 Vidal Sassoon, Inc., for refund of franchise tax in the amount of \$50,963 for the income year 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 question presented by this appeal is whether reasonable cause existed to excuse appellant's late filing of its corporate franchise tax return for the income year ended December 31, 1981. A penalty for underpayment of **estimated** taxes for the income year ended December 21, 1981, has not been contested by the appellant.

Appellant's corporate franchise tax return for the income year ended December 31, 1981, **was due** on or before **March 15, 1982.** (Rev. & Tax Code, § 25401, subd. (a).) On **March 15, 1982,** a completed application for an automatic extension of time for filing appellant's 1981 return and a check in the amount of tax expected to be due was delivered to **appellant's** mail room, in accordance with appellant's usual practice, with **directions that the application and check be mailed that day** by certified mail. **However,** the application was not mailed until three days later, on **March 18, 1982.**

The Franchise Tax Board received the extension request on **March 22, 1982,** and denied the request because it was not timely filed. Appellant was notified of the denial on April 27, 1982, but did not **file** the return until June 15, 1982. The return was received by the **Franchise Tax Board** on June 21, 1982. The **Franchise Tax Board** assessed a late filing penalty pursuant to section **25931.** The penalty assessed was computed as **20** percent of the tax. **In its brief,** the Franchise Tax- **Board** has conceded that it should have computed the penalty as 15 percent of the tax (**Resp. Br. at 1, fn. 1**). The Franchise Tax Board applied appellant's overpayment as shown on its return against the penalty, leaving a balance due of **\$1,705.77.** Appellant paid the balance due, filed a claim for refund, which was denied, and then filed this appeal.

The Franchise Tax Board contends that **appellant** has not shown that its late filing was due to reasonable cause and, therefore, the imposition of the penalty was proper. Appellant argues that the reasonable cause standard applies to late filing of **an** extension request and that reasonable cause existed to excuse the late filing. Although not specifically stated, it appears that appellant is arguing that the extension request should have been granted, and the return should have been considered timely filed since it was filed within the time which would have been allowed, had the extension request been granted_

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Section 25402, subdivision (b), provides an automatic extension of time if, "in such manner and at such time as the Franchise Tax Board may by regulations prescribe," the taxpayer files the prescribed form and pays, on or before the tax payment due date, the amount estimated to be due. The applicable regulation is Treasury Regulation section 1.6081-3. (Cal. Admin. Code, tit. 18, reg. 26422.) Subdivision (a)(2) of the treasury regulation states, as a requirement for the granting of an automatic extension, that "The application must be filed on or before the date prescribed for the filing of the return of the corporation . . ." There is no provision in either the statute or regulation for a reasonable cause exception for late filing of an extension request.

Appellant argues, however, that the reasonable cause exception of section 25931 is applicable to late extension requests. Section 25931 imposes a -penalty if a 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 . . . unless it is shown that the failure is due to reasonable cause and not due to willful neglect." Appellant argues that an extension request is a "return" and thus subject to the section 25931 reasonable cause. exception. We disagree with appellant's contention. The cases cited by appellant hold only that for purposes of Internal Revenue Code section 6601(c)(2)(B) (redesignated as Code Sec. 6601(b)(2)(B) by P.L. 93-625 § 7(b)(f), eff. 7-1-75) an extension request may be considered a return, That Internal Revenue Code section is unrelated to the issue before us and we see no reason to expand the courts' interpretation to other statutes. In addition, section 25931 applies only to returns required to be filed and an extension request is not required.

Appellant also makes policy arguments in favor of its position. However, these arguments are unsupported by any authority and, in any case, would be applicable only to a penalty for failure to pay tax, not for failure to file a return. After considering all the arguments, we conclude that the reasonable cause standard is not applicable to requests for automatic extensions and the request was properly denied by the Franchise Tax Board.

Alternatively, appellant has argued. that reasonable- cause existed to excuse the late filing of its return. It contends that its reasonable reliance on the

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granting of the extension request and its reasonable efforts to obtain the automatic extension constitute reasonable cause for the late filing of the return, regardless of whether the reasonable cause standard applies to the extension request. The short answer to this is that the cause of the return being filed late was appellant's difficulty in compiling its business records, not the denial of the extension request. Such a justification has been held to fall short of reasonable cause. (See e.g., Appeal of Dynamic Speaker Corp., et al., Cal. St. Bd. of Equal., June 27, 1984.) We conclude, therefore, that reasonable cause did not exist to excuse the late filing of appellant's return and that the action of the Franchise Tax Board 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 Vidal Sassoon, Inc., for refund of franchise tax in the amount of \$50,963 for the year 1981, be and the same is hereby modified to reflect respondent's concession that the penalty was improperly computed, In all other respects, the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 19th day of November, 1986, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Collis, Mr. Bennett, Mr. Dronenburg and Mr. Harvey present.

Richard Nevins , 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