

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
) No. 93R-1431
Fluor Corporation)
)

For Appellant: Thomas H. Morrow,
Vice President

For Respondent: John W. Penfield, Counsel

OPINION

This appeal is made pursuant to section 19324 (formerly section 26075), subdivision (a),^{1/} of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of Fluor Corporation for refund of franchise tax in the amounts of \$6,687 and \$53,917 for the income years ended October 31, 1978, and October 31, 1981, respectively.

^{1/} Unless otherwise specified, all section references hereinafter in the text of this opinion are to sections of the Revenue and Taxation Code as in effect for the income years in issue.

The issues to be decided in this appeal are whether respondent correctly calculated the amount of interest due on deficiencies for the appeal years and whether overpayments in one year may be used to temporarily offset deficiencies in another year in order to reduce the accrual of interest on those deficiencies.

Appellant overpaid its taxes for income years ended October 31, 1979, and October 31, 1982. It claims those overpayments should be credited towards the deficiencies for the appeal years until such time as the overpayments are either refunded or credited to another income year, thereby reducing the amount of interest accruing on the deficiencies.

As the result of an audit, respondent determined appellant owed additional tax in the amount of \$33,778 for the income year ended October 31, 1978.^{2/} Interest was calculated through January 22, 1993, and appellant paid the outstanding balance. After transferring some money to another account and making estimated payments for the following year, appellant's return for the income year ended October 31, 1979 showed an overpayment of \$234,078, which was refunded, without interest, on August 21, 1980.^{3/} Appellant claims that if \$33,778 of this overpayment were applied to the 1978 deficiency during the period prior to its refund, it would not have to pay \$6,687 in accrued interest.^{4/}

Appellant's 1981 tax return showed an unpaid balance due of \$46,263, which was paid, with interest, on July 15, 1982. After respondent audited appellant's 1981 return, it determined that additional tax in the amount of \$485,641 was owed.^{5/} Interest was calculated through January 22, 1993, and appellant paid the outstanding balance. Appellant's return showed an overpayment of \$1,476,297 for the income year ended October 31, 1982, which was refunded, without interest, on October 4, 1983.^{6/} Appellant claims that if \$485,641 of this overpayment were applied to the 1981 deficiency during the period prior to its refund, it would not have to pay \$53,917 in accrued interest.^{7/}

Generally, interest is payable on overpayments of tax from the date of overpayment, unless the return has not been timely filed. (See Rev. & Tax. Code, § 26080.) However, if the overpayment is refunded or credited to the taxpayer within 90 days of filing the return or the date

^{2/} Apparently, the audit was completed and settled sometime in 1992.

^{3/} Appellant's return was due on January 15, 1980, and filed on or about July 15, 1980.

^{4/} Appellant's 1979 return was subsequently audited by respondent, and resulted in the imposition of \$34,208 in additional tax, which reduced the amount of the overpayment to \$199,870. However, this reduction in the amount of the refund has no apparent impact on the sufficiency of overpayments to allocate towards the 1978 deficiency.

^{5/} Apparently, the audit was completed and settled sometime in 1992.

^{6/} Appellant's return was due on January 15, 1983, and filed on or about August 15, 1983.

^{7/} Appellant's 1982 return was subsequently audited by respondent, and resulted in the imposition of \$1,278,445 in additional tax, which reduced the amount of the overpayment to \$197,852. However, this reduction in the amount of the refund merely reduces the amount of interest it can save, but has no other apparent impact on appellant's theory for recovery.

prescribed for filing the return (determined without regard to any extension), whichever is later, no interest is due on such overpayment. (See Rev. & Tax. Code, § 26080.5.) On the other hand, interest on deficiencies accrues from the date the tax is due. (See Rev. & Tax. Code, § 25901b, subd. (a).) Interest on a deficiency is not a penalty, but is compensation for the use of money. (United States v. Childs, 266 U.S. 304 [69 L.Ed. 299] (1924); United States v. Goldstein, 189 F.2d 752 (1st Cir. 1951); Appeal of Frank R. and C. A. Moothart, Cal. St. Bd. of Equal., Feb. 8, 1978.)

None of the authorities cited by appellant prescribes the netting of overpayments for one year against deficiencies for another year, as it proposes. The pertinent Internal Revenue Code and Revenue and Tax Code sections,^{8/} the Avon Products^{9/} decision, and the revenue rulings^{10/} all refer to credits and offsets within the same year, which respondent already implements. The congressional conference reports^{11/} and 1992 IRS Commissioners' Advisory Group report cited by appellant merely note the desirability of "global netting," and advises the United States Treasury Department to develop proposals to effectuate this procedure. By no means are they legislative mandates.

While appellant's theory for recovery may be economically sound, it is also well settled that deductions and credits are a matter of legislative grace and are allowable only where the conditions established by the legislature have been satisfied. (See New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78 L.Ed. 1348] (1934); Appeal of Frederick A. Sebring, Cal. St. Bd. of Equal., Dec. 9, 1980.) Moreover, statutory provisions for tax credits must be narrowly and strictly construed against the taxpayer. (Miller v. McColgan, 17 Cal.2d 432, 442 [110 P.2d 419] (1941); William Lyon Company v. Franchise Tax Board, 4 Cal.App.4th 267 [5 Cal.Rptr.2d 680] (1992).) Furthermore, section 26080.5 already provides that no interest will be paid for refunds or credits of overpayments made within 90 days of the filing of the return. Thus, to allow appellant to reduce the amount of interest due on deficiencies for the appeal years by temporarily applying the overpayments from subsequent years thereto would obfuscate this provision and, in effect, award interest to appellant in a situation not permissible under law. This we decline to do absent legislative approval.

Accordingly, respondent's action in this matter is sustained.

^{8/} See I.R.C. § 6601(f); Rev. & Tax Code, § 25906.

^{9/} Avon Products, Inc. v. United States, 588 F.2d 342 (2d Cir. 1978).

^{10/} See Rev. Rul. 88-97, 1988-2 C.B. 355; Rev. Rul. 88-98, 1988-2 C.B. 356.

^{11/} See H.R. Conf. Rep. No. 964, 101st Cong., 2d Sess. (1990) [1990 U.S. Code Cong. & Ad. News 2374; H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. (1986) [1986 U.S. Code Cong. & Ad. News 4075].

ORDER

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 19333 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claims of Fluor Corporation for refund of franchise tax in the amounts of \$6,687 and \$53,917 for the income years ended October 31, 1978, and October 31, 1981, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 31st day of August, 1995, by the State Board of Equalization, with Board Members Mr. Klehs, Mr. Dronenburg, Mr. Andal, Mr. Sherman and Mr. Halverson present.

Johan Klehs _____, Chairman

Ernest J. Dronenburg, Jr. _____, Member

Dean F. Andal _____, Member

Brad J. Sherman _____, Member

Rex Halverson* _____, Member

*For Kathleen Connell, per Government Code section 7.9.