



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
CONTINENTAL CAN COMPANY, INC. }

For Appellant: N. J. Sheppard
Tax Attorney

For Respondent: Crawford H. Thomas
Chief Counsel

Wilbur F. Lavelle
Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to section 26080.1 of the Revenue and Taxation Code from the action of the Franchise Tax Board in disallowing interest on a claim by Continental Can Company, Inc., for refund of franchise tax in the amount of \$26,206.52 for the income year 1963.

The question presented is whether the amount refunded to appellant constitutes an "overpayment in respect of any tax" within the meaning of section 26080 of the Revenue and Taxation Code so as to entitle appellant to interest thereon.

Appellant Continental Can Company, Inc. (hereafter "Continental"), is a New York corporation which has been doing business in California for many years. It is engaged in a unitary business and files its California franchise tax returns on a calendar year basis. The due date for filing its return for the income year 1963 was March 15, 1964. Late in February 1964 Continental requested and was granted an extension to June 15, 1964, for the filing of its tax return. However, the due date for payment of the tax remained March 15, 1964, since there is no provision in the law for extending this date. Accordingly, Continental in good faith estimated its tax at \$340,000 and sent this payment to respondent on or about March 13, 1964.

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Subsequently the time for filing the *franchise* tax return was further extended to September 15, 1964. The return was received by respondent on September 14, 1964, accompanied by a claim for refund of \$26,206.52, the amount by which the estimated tax paid exceeded the tax declared on the return. Respondent approved and paid Continental's claim but denied interest on the amount refunded.

Continental states that the overpayment was occasioned by the fact that the estimate of tax was made prior to the availability of the final federal taxable income figures for 1963 and prior to its receipt of a ruling from the internal Revenue Service which allowed it a greater deduction for vacation accruals than previously determined.

The question presented here is the same as that decided this day by us in the Appeals of MCA Inc. and MCA Artists, Ltd. We do not find any material difference between the *facts* in the two cases. Accordingly, we conclude that Continental is entitled to interest under section 26080 of the Revenue and Taxation Code on its \$26,206.52 overpayment.

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 26080.1 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in disallowing interest on the claim by Continental Can Company, Inc., for refund of franchise tax in the amount of \$26,206.52 for the income year 1963 be and the same is hereby reversed,

Done at Sacramento, California, this 7th day of March, 1967, by the State Board of Equalization.

Paul R. Leape, Chairman
John W. Lynch, Member
Arthur J. ..., Member
Bob ..., Member
..., Member

Attest: [Signature], Secretary