

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
BECHTEL INCORPORATED)

For Appellant: Miles H. Bresee, Jr.
Assistant Treasurer

For Respondent: Bruce W. Walker
Chief Counsel

Kendall Kinyon
Counsel

O P I N I O N

This appeal is made pursuant to section 26077 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Bechtel Incorporated for refund of penalty in the amount of \$13,547.73 for the income year 1975.

Appeal of Bechtel Incorporated

The sole question for decision is whether a penalty for underpayment of estimated tax was properly imposed against appellant for the income year 1975.

Appellant, a Nevada corporation, began doing business in California in 1957. It files its California franchise tax returns on a calendar year basis. In its timely filed return for the income year 1975, appellant reported a self-assessed franchise tax liability of \$1,059,849. In that return appellant also indicated that it had made estimated tax payments totalling \$495,000 during 1975, and had paid an additional \$805,000 in March of 1976, with its application for an extension of time to file. Appellant requested a refund of \$240,151, the difference between its reported franchise tax liability for the 19'75 income year and its total prepayments with respect. to that year.

Respondent's review of appellant's account disclosed that its estimated tax payments in 1975 had been made in the following manner:

| | <u>Date Paid</u> | <u>Amount</u> | <u>Cumulative</u> |
|-----------------|------------------|---------------|-------------------|
| 1st Installment | 4/15/75 | \$100,000 | \$100,000 |
| 2nd Installment | 6/15/75 | 107,000 | 207,000 |
| 3rd Installment | 9/15/75 | 164,250 | 371,250 |
| 4th Installment | 12/15/75 | 123,750 | 495,000 |

On the basis of the above schedule, respondent determined that appellant was subject to a penalty in the total amount of \$13,547.73 for underpayment of the first two installments of estimated tax due for the income year 1975. Accordingly, respondent deducted \$13,547.73 from the refund otherwise due appellant. That action gave rise to this appeal.

It appears that respondent has properly computed the amount of the penalty assessment. As stated above, appellant's self-determined franchise tax liability for its 1975 income year was \$1,059,849. Under the corporate estimated tax provisions of Revenue and Taxation Code sections 25561 and 25563, subdivision (d), appellant was required to estimate and prepay that amount in four equal installments of \$264,962.25 on April 15, 1975, June 15, 1975, September 15, 1975, and December 15, 1975. None of the separate prepayments made by appellant during 1975, exceeded \$164,250.

.A penalty for underpayment of estimated tax is imposed by section 25951 of the Revenue and Taxation Code, which states:

Appeal of Rehtel Incorporated

In case of any underpayment of estimated tax, except as provided in Section 25954, there shall be added to the tax for the taxable year an amount determined at the rate of 12 percent per annum [6 percent per annum prior to January 1, 1976] upon the amount of underpayment (determined under Section 25952) for the period of the underpayment (determined under Section 25953).

Under section 25952 there is no "underpayment" of estimated tax if the taxpayer has paid 80 percent of each installment otherwise due on each of the prescribed dates. Thus, if appellant herein had made timely estimated tax payments in the amounts of at least \$211,969.80 (80% of \$264,962.25), there would have been no underpayment of tax. As we have seen, however, none of appellant's prepayments of tax in 1975 exceeded \$164,250.

The period of the underpayment runs from the installment due date to the date of payment or the return filing date, whichever is earlier. (Rev. & Tax. Code, § 25953.) No amount of any prepayment will be applied to any previous underpayment of estimated tax, except to the extent such payment exceeds 80 percent of the installment then due. (Rev. & Tax. Code, § 25953, subd. (b).) Under these provisions, respondent correctly determined that the period of underpayment of appellant's estimated tax ran from the due date of each installment to March 15, 1976, the normal due date of appellant's franchise tax return. ¹³

It therefore appears that the penalty here in issue was properly imposed, unless appellant qualifies for relief under section 25954 of the Revenue and Taxation Code. That section provides, in substance, that no penalty will be imposed if the total amount of estimated tax payments made by each installment due date equals or exceeds the amount that would have been due by such date if the estimated tax were the lesser of:

(a) the tax shown on the taxpayer's return for the preceding income year;

¹³/ The penalty on the underpayments was computed at the rate of 6 percent per annum through December 31, 1975, and at the rate of 12 percent per annum thereafter.

Appeal of Bechtel Incorporated

(b) the tax computed at the rates for the current taxable year but otherwise on the basis of the facts and law applicable to the return for the preceding taxable year; or

(c) for income years beginning after December 31, 1971, an amount equal to 80 percent of the tax for the taxable year computed by placing on an annualized basis the taxable income for stated periods of the income year preceding each estimated tax installment due date.

Appellant contends that it qualifies for relief from the penalty assessment under subdivision (a) above. It bases this contention on the fact that: by December 15, 1975, its total prepayments of estimated tax in 1975 exceeded its franchise tax liability for the preceding income year. Although that is an accurate factual statement, it does not meet the statutory requirements for relief from the penalty. In order for subdivision (a) of section 25954 to apply, it must be determined that the estimated payments made during each installment period equaled or exceeded the amount which would have been due by the end of each installment period if: the estimated tax were that shown on the taxpayer's return for the preceding income year. In the instant case, the tax shown on appellant's return for the income year 1974 was **\$459,795**. Under the subdivision (a) exception the amount of estimated tax due on or before the end of each installment period was therefore **\$114,948.75**, and the cumulative amounts due by the respective installment dates were **\$114,948.75**, **\$229,897.50**, **\$344,846.25** and **\$459,795.00**. Appellant's estimated tax payments of \$100,000 on April 15, 1975, and \$107,000 on June 15, 1975, were less than the cumulative amounts due by the end of each of those installment periods. That being so, with respect to those first two installments appellant did **not meet** the penalty relief requirements of subdivision (a) of section 25954. 2/

2/ By its third and fourth installment payments on September 15, 1975, and December 15, 1975, appellant exceeded the cumulative amounts due on those dates, and respondent properly determined that no penalty applied for those installment periods.

Appeal of Bechtel Incorporated

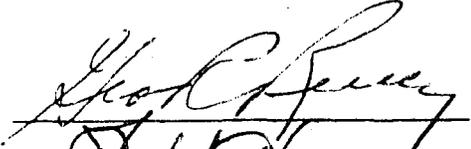
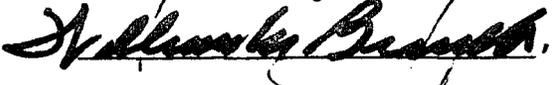
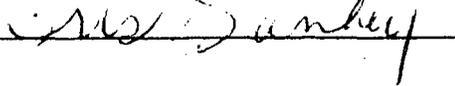
Since there is no evidence that any other exception set forth in section 25954 is applicable in this case, we conclude that the penalty for underpayment of estimated tax, as computed by respondent, was properly imposed against appellant for its income year 1975. Respondent's action in this matter must therefore be sustained.

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 Bechtel Incorporated for refund of penalty in the amount of \$13,547.73 for the income year 1975, be and the same is hereby sustained.

Done at Sacramento, California, this 26th day of July , 1978, by the State Board of Equalization.

 , Chairman
 , Member
 , Member
 , Member
_____, Member