CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 392

September 23, 1975

CORPORATE UNDERPAYMENT PENALTY WHEN FILING EXTENSION IS GRANTED

Syllabus:

Advice has been requested concerning the operation of the underpayment penalty set forth in Section 25934.2 of the Revenue and Taxation Code in cases involving approved corporate extension requests.

Section 25402 of the Revenue and Taxation Code authorizes the Franchise Tax Board to grant corporations reasonable extensions of time for filing returns whenever in the Board's judgment good cause exists. While Section 25402 does not require payment of the tax estimated to be due with the return as a condition to obtaining the filing extension, Section 25551 requires payment of the tax not later than the time fixed for filing the return (determined without regard to any extensions of time for filing the return). If any taxpayer fails to pay the full amount of its tax by the time specified by Section 25551, Section 25934.2 imposes a penalty unless the failure to pay was due to reasonable cause and not wilfull neglect.

A taxpayer which requires an extension of time to file its return is not exempt from the provisions of Section 25934.2; underpayments of tax existing at the regular date of the return will not be excused solely because an extension for filing the return was granted.

The "good cause" which supports the filing extension operates independently of the "reasonable cause" necessary to avoid the underpayment penalty. A taxpayer may obtain a filing extension despite the fact that no payments toward the expected tax liability have been made; conversely, a taxpayer may avoid the underpayment penalty by establishing that reasonable cause exists for the underpayment, yet may not be able to show the good cause necessary to obtain a filing extension.

In some instances, the basis for obtaining the filing extension will also explain the underpayment. In each case, however, the burden rests with the taxpayer to demonstrate that the failure to fully pay the entire amount of the tax by the regular due date of the return was due to reasonable cause.

Legal Ruling No. 342, CCH 204-418, P-H 13,576, is hereby withdrawn.

WITHDRAWN