



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JONES-MOORE PAINT HOUSE, INC.)

Appearances:

For Appellant: F. H. Jones, San Diego

For Respondent: Reynold E. Blight, Franchise Tax
Commissioner

O P I N I O N

This is an appeal pursuant to Section 25 of the Bank and Corporation Franchise Tax Act (Chapter 13, Statutes of 1929) from the action of the Franchise Tax Commissioner in demanding the minimum tax of \$25.00 based upon a return filed by Jones-Moore Paint House, Inc. for the month of December, 1928.

Previously, the Appellant had made a return covering its fiscal year ended November 30, 1928. This disclosed the accrual of a \$25.00 minimum tax which was paid and which is not disputed. Under the terms of Section 13 of the Act, this tax was for the privilege of exercising its corporate franchises within this state, "for the months of the year 1929, corresponding to the months of 1928 which fall within the fiscal year ended during 1928." On such a basis, the tax of the Appellant was paid until November 30, 1929, and normally a tax for another year ending November 30, 1930, would have accrued on December 1, 1929.

However, the corporation determined upon a change in the method of its accounting from a fiscal to calendar year basis and, accordingly, made a return for the single month of December, 1928, in order that it might start a new accounting year as of January 1, 1929. Thereupon, the Commissioner declared his intention of assessing another minimum tax based on this return. Just what period would be covered by such an assessment is not clear, although presumably it would be a tax for the month ended December 31, 1929. The tax could not be for a period beginning any earlier because the previous assessment had extended to November 30, 1929, nor could it cover a period extending beyond December 31, 1929, because the assessment to be made on the return for the taxable year ended December 31, 1929, would be for the privilege of doing business during the entire year 1930.

As authority for this assessment of a minimum tax of \$25.00 for the privilege of doing business for a single month, the Commissioner cites Section 4 of the Act, reading in part

Appeal of Jones-Moore Paint House, Inc.

as follows: "In any event, each such corporation shall pay annually to the state, for the said privilege, a minimum tax of twenty-five dollars."

We think that the use of the word "annually" in this provision is significant. It means once a year and not once a month. The Appellant has paid a tax for the privilege of exercising its corporate franchises during 1929 up to and including November 30, 1929. Based on its return for the year 1929, it has paid by now a tax for the same privilege during the entire year 1930. Is it to be charged an "annual" tax of \$25.00 for this privilege for the month of December, 1929?

In support of an affirmative answer to this question, the Commissioner says that if there had been no return filed for the month of December, 1928, "the net income for that month would not have figured in the calculation of the Appellant's taxes, which would have been contrary to the letter and spirit of the Act and the omission of that period would have constituted an escape or evasion,"

Referring to Section 11 of the Act, which defines, among other things, "taxable year," the Commissioner points out that this "includes, in the case of a return made for a fractional part of a year, the period for which such return is made." The apparent intention of the framers of the law was to provide for liability to make a return covering every closed accounting period during 1928 and each succeeding year, in order that all net income realized in any one year might be used in the calculation of the tax for the privilege of doing business in the ensuing year. This is further demonstrated by the provision in Section 13 of the Act that "a corporation which commences to do business in this state, after the effective date of this Act, shall thereupon prepay the minimum tax hereunder, and upon the filing of its return within two months and fifteen days after the close of its taxable year its tax for that year shall be adjusted upon the basis of the net income received during that taxable year. Said return shall also, in accordance with Sections 23 to 26, inclusive, be the basis for the tax of said * * * corporation for its second taxable year."

Casual inspection of the language discloses that the law is not so framed as to impose burdens which are uniformly comparable. For example, a corporation commencing to do business in January, 1929, was not required to pay a minimum tax during that year because it began business prior to the effective date of the Act, viz: March 1, 1929. If its accounting period was on a calendar year basis, its first return was due March 15, 1930. On the basis of this return it would pay a tax for the privilege of doing business in 1930. No tax would ever be paid for that privilege in 1929. A corporation commencing to do business in March, 1929, would be required to pay the minimum tax immediately, and, if using a calendar year accounting period to make a return on March 15, 1930. On the basis of such a return, it would pay taxes for the privilege of doing business both in 1929 and 1930, although it had actually done business for a shorter period in 1929 than the other corporation, which paid no tax at all

Appeal of Jones-Moore Paint House, Inc.

for that year.

To carry the illustration further, a corporation with a calendar year accounting period could have done business for the one month of December, 1929, and made a return accordingly on March 15, 1930. This would have been the basis not only of the tax for the privilege of doing business in 1929, but for the same privilege for the entire year 1930. The net income for one month furnishes the measure for the privilege of doing an entire year's business.

Yet in the case before us, the Commissioner insists that a minimum tax is payable for each "taxable year" regardless of the length of that period, and seeks to collect two minimum taxes from the Appellant for the privilege of doing business during the year 1929, in order that there may be no "escape or evasion." We do not believe this demand is justified. Before the Act became effective, the Appellant had changed its accounting period to the calendar year. Under the terms of Section 13 of the Act, the Appellant was required to report its net income for the year ended November 30, 1928, and for the fractional year ended December 31, 1928, -on or before May 15, 1929. From these two returns the Commissioner could readily have ascertained whether or not the net income of the Appellant for 1928 as determined from eleven-twelfths of its net income for the year ended November 30, 1928, plus its net income for December, 1928, was such that, when the proper offsets allowable under Section 26 had been taken into consideration, the tax of the corporation for the year 1929 should be \$25.00 or more. If it should be more than \$25.00, that ought to be because the corporation enjoyed sufficient income in 1928 to warrant the assessment of more than the minimum for 1929 and not because it changed its accounting period in 1928. We can see no merit in the assessment of two annual taxes of \$25.00 each for the privilege of doing business in the single year of 1929.

Other points are raised by the Appellant but in view of our conclusion above we do not deem their discussion necessary to the determination of this appeal,

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, that the action of Reynold E. Blight, Franchise Tax Commissioner, in overruling the protest of Jones-Moore Paint House, Inc., a corporation, against a proposed assessment of the minimum tax under Chapter 13, Statutes of 1929. based upon the return of said corporation for the month of December, 1929, be and the same is hereby reversed. Said ruling is hereby set aside and the Franchise Tax Commissioner is hereby directed to proceed in conformity with this order.

Appeal of Jones-Moore Paint House, Inc.

Done at Sacramento, California, this 24th day of February,
1931, by the State Board of Equalization.

Jno. C. **Corbett**, Chairman
Fred E. Stewart, Member
H. G. **Cattell**, Member
R. E. Collins, Member

ATTEST: Dixwell L. Pierce, Secretary