



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
ANGLO-AMERICAN MINING CORPORATION, LTD.)

Appearances:

For Appellant: John Cummings, Certified Public Accountant

For Respondent: James J. Arditto, Franchise Tax Counsel;
William L. Toomey, Jr., Assistant Franchise
Tax Counsel.

O P I N I O N

This appeal is made pur-suant to Section 27 of the Bank and Corporation Franchise Tax Act (Chapter 13, Statutes of 1929, as amended) from the action of the Franchise Tax Commissioner in denying the claim of the Appellant for a refund of franchise taxes in the amount of \$748.08 for the taxable year ended December 31, 1936.

On March 16, 1936, the taxpayer filed its return for the income year ended December 31, 1935, showing a net loss and the minimum tax was paid. On February 9, 1939, the Commissioner issued a notice of additional franchise tax proposed to be assessed in the amount of \$630.49. The additional tax plus interest, or a total of \$748.08, was paid by the Appellant on May 4, 1939. On March 22, 1941, the Appellant filed a claim for refund of the \$748.08. Since the additional tax had been paid on May 4, 1939, the date of the filing of the refund claim was more than one Year after the date on which the tax had been paid. The filing date of the claim was also more than four years after the last date prescribed for filing the return for the taxable year in question.

At the time the Appellant made the overpayment, namely, on May 4, 1939, Section 27 of the Bank and Corporation Franchise Tax Act provided that a claim for refund could be filed within three years from the time the tax was paid. Accordingly, if the law in effect at that time is controlling, the action of the Commissioner in denying the claim as one barred by the statute was incorrect. That section, however, as amended by Statutes of 1939, Ch. 1050, **effective** July 25, 1939, provides for the filing of refund claims within four years from the last day prescribed for filing the return or within one year from the date of the overpayment, whichever period expires the later. It will thus be noted that, if the provisions of Section 27, as the section read prior to the 1939 amendment, are controlling, the Appellant had until May 4, 1942, within which to file its refund claim, and that, if the 1939 amendments are controlling, the Appellant had until March 15, 1940 to file the claim.

Appeal of Anglo-American Mining Corporation, Ltd.

The Legislature, in general, may change retroactively the rules of law relating to remedy and procedure. No one has a vested right in such laws. (San Bernardino v. Industrial Accident Commission, 217 Cal, 618, 20 Pac. 2d 673.) Statutes of limitations affect the remedy and not the right, and, therefore, enactments of the Legislature changing such statutes are valid. (Swamp Land District v. Glide, 112 Cal. 85, 44 Pac. 451; Doehla v. Phillips, 151 Cal. 488, 91 Pac. 334.) The prescribed statutory periods may be shortened. Of the numerous cases holding to that effect, Rosefield Packing Co. v. Superior Court, 4 Cal. (2d) 120; 47 Pac. (2d) 16, and Coleman v. Superior Court, 135 Cal. App. 74, 26 Pac. (2d) 673; should suffice as authority.

The only restriction placed on the shortening of the statutory period of limitations is that an existing right cannot be cut off summarily. If, however, the holder of the right is given a reasonable time after the legislation becomes effective to exercise the right, the statute is valid. (Reynolds v. Jensen, 14 Cal. App. 2d 558, 58 Pac. (2d) 687.) After the effective date of the 1939 amendment to Section 27, the Appellant had a period of nearly eight months within which to file a timely claim for the refund. Such a period cannot be said to limit unreasonably the exercise of the right.

Occasionally a distinction is made with respect to the shortening of the statute of limitations relating to causes of action arising at common law or on contract and causes of action or rights which are based entirely upon statute. With reference to the latter it has been held that the Legislature has authority even to cut off the existing statutory right entirely. (In re Baer's Will, 266 N.Y. Supp. 733, which was a case involving an amendment to a statute authorizing a refund of taxes.) See also Krause v. Rarity, 210 Cal. 644, 293 Pac. 62.

Section 21 of the amendatory act (Stats. 1939, Ch. 1050) containing the amendments to Section 27 of the Bank and Corporation Franchise Tax Act in 1939 provided:

"This act, inasmuch as it provides for a tax levy for the usual current expenses of the State, shall under the Provisions of Section 1 of Article IV of the Constitution, take effect immediately? and shall be applied in the computation of taxes accruing subsequent to December 31, 1938."
(emphasis added)

The Appellant contends that because of the provision emphasized above, and because the tax here involved accrued prior to December 31, 1938, the amendment to Section 27 does not apply in this case. We do not so interpret the language quoted. That section provides that the provisions of the act shall take effect immediately. The provisions of Section 27, with which we are here concerned, do not relate to the computation of taxes. Provisions relating to the computation of taxes concern matters which increase or lessen the tax or provide for its calculation or determination. Furthermore, the latter words of the section quoted above are not restrictive, but are expansive in nature. Those words were undoubtedly included in the section to rebut the presumption which might otherwise arise

Appeal of Anglo-American Mining Corporation, Ltd.

against the retroactivity of the provisions relating to the computation of taxes. Those words were obviously not intended to restrict the retroactive effect which would **ordinarily be given to the** remedial or procedural provisions contained in the amendatory act.

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 Charles J. **McColgan**, Franchise Tax Commissioner, in denying the claim of Anglo-American Mining Corporation, Ltd., in the amount of **\$748.08** for the taxable year ended December **31, 1936**, pursuant to Chapter 13, Statutes of 1929, as amended, be, and the same is hereby **affirmed**.

Done at Los Angeles, California, this 18th day of June, 1943,
by the State Board of Equalization.

R. E. Collins, Chairman
J. H. Quinn, Member
George R. Reilly, Member
Wm. G. Bonelli, Member

ATTEST: Dixwell L. Pierce, Secretary