

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
ATLANTIC AND PACIFIC WRECKING COMPANY, INC.)

Appearances:

For Appellant: Frank West, President
For Respondent: Burl D. Lack, Chief Counsel;
John S. Warren, Associate Tax Counsel;
A. Ben Jacobson, Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to Section 25667 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the protests of Atlantic and Pacific Wrecking Company, Inc., to proposed assessments of additional franchise tax in the amounts of \$1,911.95, \$1,911.95, \$6,054.08, \$412.16 and \$1,188.53 for the respective taxable years 1950 to 1954, inclusive.

The Franchise Tax Board contends that Appellant cannot maintain an appeal to this Board because its corporate powers, rights and privileges have been suspended.

Appellant is a California corporation. It did not file a franchise tax return or pay in full the tax due for the taxable year 1956 based on the income year 1955. The return was due March 15, 1956, and the final installment was payable September 15, 1956.

Section 23301 provides that "Except for the purpose of amending the articles of incorporation to set forth a new name, the corporate powers, rights and privileges of a domestic taxpayer shall be suspended . . ." if it fails to pay its franchise tax by the end of the twelfth month following the close of the income year. Section 23302 provides that the suspension is effective when notice is filed with the Secretary of State.

Appellant's corporate powers, rights and privileges were suspended effective March 1, 1957, pursuant to these provisions. The appeal was filed on March 22, 1957.

While under suspension for nonpayment of taxes a corporation is "shorn of all rights save those expressly reserved

Appeal of Atlantic and Pacific Wrecking Company, Inc.

by the statutes." Ransome-Crummey Co. v. Superior Court, 188 Cal. 393. It may not commence or defend an action, nor appeal from an adverse decision. Boyle v. Lakeview Creamery Co., 9 Cal. 2d 16; Ocean Park etc. Co. v. Pacific Auto Park Co., 37 Cal. App. 2d 158; Baker v. Ferrel, 78 Cal. App. 2d 578; Fidelity Metals Corp. v. Risler, 77 Cal. App. 2d 377; Alhambra-Shumway Mines, Inc. v. Alhambra Gold Mine Corp., 155 Cal. App. 2d 46. The contention of the Franchise Tax Board that Appellant while suspended was without authority to prosecute an appeal to this Board must, accordingly, 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 25667 of the Revenue and Taxation Code, that the appeal of Atlantic and Pacific Wrecking Company, Inc., from the action of the Franchise Tax Board on its protests to proposed assessments of additional franchise tax in the amounts of ~~\$1,911.95~~, ~~\$1,911.95~~, ~~\$6,054.08~~, \$412.16 and ~~\$1,188.53~~ for the taxable years 1950 to 1954, inclusive, respectively, be and the same is hereby dismissed.

Done at Sacramento, California, this 22nd day of July, 1958, by the State Board of Equalization.

George R. Reilly, Chairman

J. H. Quinn, Member

Robert E. McDavid, Member

Paul R. Leake, Member

_____, Member

ATTEST: Dixwell L. Pierce, Secretary