



BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
THE HERMOYNE, INC. )

Appearances:

For Appellant: Robert S. Wolf, Attorney at Law  
For Respondent: Burl D. Lack, Chief Counsel  
John S. Warren, Associate Tax Counsel

OPINION

This appeal is made pursuant to Section 25667 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of The Hermoyne, Inc., to proposed assessments of additional franchise tax in the amounts of ~~\$639.21~~, ~~\$361.37~~ and ~~\$95.02~~ for the taxable years 1947, 1948 and 1949, respectively.

Appellant, a California corporation, commenced business in 1946. As a "commencing" corporation, its franchise taxes for the taxable years 1947 and 1948 were based on the income year 1947, and its tax for the taxable year 1949 was based on the income year 1948 (see Section 13(c) of the Bank and Corporation Franchise Tax Act, now Section 23222 of the Revenue and Taxation Code),

Since the filing of this appeal, the Appellant and the Franchise Tax Board have agreed upon certain adjustments to depreciation deductions. It has also been conceded by the Appellant, in view of a waiver of limitations filed by it with respect to the income year 1948, that the assessment based on that year was proper. Thus, the sole question before us is whether the assessments for the taxable years 1947 and 1948, based on the income year 1947, were timely.

Appellant filed its franchise tax return for the income year 1947 on March 15, 1948. The time for deficiency assessments for that income year was then limited to March 15, 1952 (Section 25(f) of the Bank and Corporation Franchise Tax Act, now Section 25663 of the Revenue and Taxation Code). Prior to that date, it agreed with the United States Commissioner of Internal Revenue to extend to June 30, 1953, the time for assessing deficiencies of Federal income tax for the year 1947. This automatically extended to December 31, 1953, the time for assessing a deficiency of State franchise tax for that income year (Section 25663(a) of the Revenue and Taxation Code). On October 24, 1952, Appellant petitioned

Appeal of The Hermoyne, Inc.

the Tax Court for redetermination of a deficiency of Federal tax assessed by the Commissioner of Internal Revenue for the year 1947. On December 21, 1953, the Tax Court entered an order redetermining the Federal deficiency pursuant to a stipulation between Appellant and the Commissioner. The franchise tax assessments here in **question** were made on March 2, 1954.

The arguments of the parties center upon the following provisions of the Revenue and Taxation Code:

"Section 25432. If the amount of net income for any year of any taxpayer as returned to the United States Treasury Department is changed ... by . . . competent authority ... such taxpayer shall report such change ... within 90 days after the final determination of such change ..."

"Section 25674. If a taxpayer is required to report a change ... as required by Section 25432 and does report such change ... any deficiency resulting from such adjustments may be assessed within six months from the date such notice ... is filed with the Franchise Tax Board . . ."

This latter section did not become effective until May 8, 1953. The enacting statute (Stats. 1953, Ch. 586) provided in part that:

"The provisions of this act effecting changes in the computation of taxes shall be applied only in the computation of taxes for income years beginning after December 31, 1952, and the remaining provisions of this act shall become effective on the effective date of this act. Provisions effecting changes in the computation of taxes shall mean those affecting income, deductions, rates, method of calculating tax, exclusions, exemptions and credits ...."

Appellant argues that the above quoted language of the enacting statute limited the application of Section 25674 to income years after 1952. Section 25674, however, did not effect a change in the computation of the tax. It constituted a **statute** of limitations which prescribed the time in which an existing tax liability could be enforced. Thus, the application of Section 25674 **was** not limited as Appellant

Appeal of The Hermoyne, Inc.

contends (see Mudd v. McColgan, 30 Cal.2d 463 ).

Appellant also argues that Section 25674 can have no application because any assessment for the income year 1947 was barred on December 31, 1953, before the order of the Tax Court became final. It contends that the order was not final until March 21, 1954, when the time for appeal therefrom had elapsed. In our view, it is not material whether the order of the Tax Court was final on March 21, 1954, or on December 21, 1953, when it was entered pursuant to stipulation. The relevant point is that Section 25674 was in effect on May 8, 1953, before any assessment for the income year 1947 was otherwise barred. The Appellant then became subject to the operation of the section with respect to the assessment of any deficiency for the income year 1947 (see Mudd v. McColgan, supra),

We have not been informed when the Appellant notified the Franchise Tax Board of the order of the Tax Court, but, even assuming that the order was final when it was entered and that Appellant gave notice immediately, the assessment of a deficiency would still not be barred under Section 25674 until six months thereafter, or June 21, 1954. The assessments on March 2, 1954, were therefore timely.

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 action of the Franchise Tax Board in denying the protests of The Hermoyne, Inc., to proposed assessments of additional franchise tax in the amounts of \$639.21, \$361.37 and \$95.02 for the taxable years 1947, 1948 and 1949, respectively, be and the same is hereby sustained.

Appeal of The Hermoyne, Inc.

Done at Sacramento, California, this 17th day of  
February, 1959, by the State Board of Equalization.

Paul R. Leake \_\_\_\_\_, Chairman

Geo. R. Reilly \_\_\_\_\_, Member

John W. Lynch \_\_\_\_\_, Member

Richard Nevins \_\_\_\_\_, Member

\_\_\_\_\_. Member

ATTEST: Dixwell L. Pierce \_\_\_\_\_, Secretary