



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
SKAGGS PAY LESS DRUG STORES)

Appearances:

For Appellant: Philip M. Jelley, Attorney at Law

For Respondent: 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 on the protest of Skaggs Pay Less Drug Stores to a proposed assessment of additional franchise tax in the amount of \$568.70 for the income year ended March 31, 1951.

Appellant is a California corporation engaged in operating a chain of retail drug stores. It has adopted a fiscal year ending March 31. Shortly prior to March 31, 1950, it incurred certain expenses in the process of opening a new store. The store was not opened until after March 31, 1950. The expenses were deducted by it in its State and Federal returns for the income year ended March 31, 1951.

In September, 1955, the Bureau of Internal Revenue asserted a deficiency for the year ended in 1951 on the ground that the expenses were deductible in the year ended in 1950. It allowed an offset for the overpayment in the previous year in accordance with Section 3801 of the Internal Revenue Code of 1939 (now Sections 1311-1314 of the 1954 Code).

Appellant, in compliance with Section 25432 of the Revenue and Taxation Code, notified the Franchise Tax Board of the Federal adjustment. The Franchise Tax Board followed the action of the Federal authorities in assessing a deficiency for the year ended in 1951, but did not allow an offset for the previous year on the ground that the statute of limitations for allowing a credit or refund for that year had expired.

Appellant concedes that the expenses involved were properly deductible in the year ended in 1950 rather than

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1951 and it does not contend that it filed a timely claim for refund or credit for the year ended in 1950. It does contend, however, that Section 25432 of the Revenue and Taxation Code requires that an offset be allowed in accordance with the action of the Federal authorities.

Section 25432 provides:

"If the amount of net income for any year of any taxpayer as returned to the United States Treasury Department is changed or corrected by the Commissioner of Internal Revenue or other office of the United States or other competent authority, or where a renegotiation of a contract or subcontract with the United States results in a change in net income, such taxpayer shall report such change or corrected net income, or the results of such renegotiation, within 90 days after the final determination of such change or correction or renegotiation, or as required by the Franchise Tax Board, and shall concede the accuracy of such determination or state wherein it is erroneous. Any taxpayer filing an amended return with such department shall also file within 90 days thereafter an amended return with the Franchise Tax Board which shall contain such information as it shall require."

We can see nothing in the above-quoted section that demands or permits the Franchise Tax Board to ignore Section 26073 of the Revenue and Taxation Code), which provides:

"No ... credit or refund shall be allowed or made after four years from the last day prescribed for filing the return or after one year from the date of the overpayment, whichever period expires the later, unless before the expiration of such period a claim therefor is filed by the taxpayer, or unless before the expiration of such period the Franchise Tax Board has certified

