



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of
WESTERN MIRACLE WATER SOFTENER, INC. }

Appearances:

For Appellant: Albert J. Federman, Attorney at Law
For Respondent: Burl D. Lack, Chief 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 protest of Western Miracle Water Softener, Inc., against a proposed assessment of additional franchise tax in the amount of \$1,521.20 for the income year 1953.

Appellant, a California corporation, filed this appeal on May 7, 1956, and thereafter briefs were submitted by the Appellant and by the Franchise Tax Board. When the matter came before us for oral hearing, the Franchise Tax Board contended that Appellant could not prosecute its appeal because its corporate powers, rights and privileges were suspended on July 1, 1957, pursuant to Sections 23301 et seq. of the Revenue and Taxation Code, for failure to file a return and pay its franchise tax for the year 1956. Appellant contended that it was not properly suspended and that it had received no notice of suspension. We allowed the Appellant additional time to produce evidence that it had not been properly suspended, but no such evidence was produced.

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 is delinquent in the payment of its franchise tax.

While under suspension for nonpayment of taxes a corporation is "shorn of all rights save those expressly reserved by statutes." Ransome-Crummey Co., v. Superior Court, 188 Cal. 393, It may not commence, maintain or defend an action, nor appeal from an adverse decision. Ransome-Crummey Co., v. Superior Court, supra; Boyle v. Lakeview Creamery Co., 9 Cal. 2d 16; Fidelity Metals Corp. v. Risle, 77 Cal. App. 2d 377; Baker v. Ferrell, 78 Cal. App. d 578; Alhambra-

Shumway Mines, Inc. v. Alhambra Gold Mine Corp., 155 Cal. App. 2d 46. Cf Schwartz v. Magyar House, Inc., 168 A.C.A. 240.

Section 23302 provides that "The Franchise Tax Board shall transmit the name of such delinquent taxpayer to the Secretary of State, and the suspension or forfeiture herein provided for shall thereupon become effective and the certificate of the Secretary of State shall be prima facie evidence of such suspension or forfeiture."

It is obvious that this section contemplates that a suspension becomes effective regardless of whether notice is given to the taxpayer. Also militating against a requirement of notice is the fact that a suspension is a matter of public record (see Op. Cal. Atty. Gen., No. 9534, August 20, 1934).

The suspension being a matter of public record, we have obtained from the Secretary of State a certificate that the name of the Appellant was filed with his office by the Franchise Tax Board on July 1, 1957, and that the Appellant's corporate powers, rights and privileges were suspended as of that date.

Since the Appellant has failed to establish that the suspension was improper and has not shown that its powers have been revived, the contention of the Franchise Tax Board that Appellant is without authority to prosecute its appeal to this Board must 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, that the Appeal of Western Miracle Water Softener, Inc., from the action of the Franchise Tax Board on its protest to a proposed assessment of additional franchise tax in the amount of \$1,521.20 for the income year 1953, be and the same is hereby dismissed,

Done at Sacramento, California, this 13th day of October, 1959, by the State Board of Equalization,

Paul R. Leake, Chairman
Geo. R. Reilly, Member
John W. Lynch, Member
Richard Nevins, Member

ATTEST: Dixwell L. Pierce, Secretary