



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
LOMITA PLAZA, INC.)

Appearances:

For Appellant: Michael J. Fasman, Attorney at Law
For Respondent: Burl D. Lack, Chief Counsel;
Israel Rogers, Junior Counsel

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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 Lomita Plaza, Inc., against a proposed assessment of additional franchise tax in the amount of \$1,577.95 for the taxable year 1955.

Appellant is a California corporation. The notice of the proposed assessment here in question was issued by the Franchise Tax Board in January, 1956, several months after the Appellant had begun proceedings to wind up its affairs. Appellant filed a protest against the assessment and remained in existence for the purpose of defending against the assessment. On February 3, 1958, the corporate rights and powers of the Appellant were suspended pursuant to Sections 23301 et seq. of the Revenue and Taxation Code for failure to pay the minimum franchise tax of \$25.00 which was due and payable for the taxable year 1956. On March 10, 1959, the Franchise Tax Board issued a notice of action denying Appellant's protest to the proposed assessment for the taxable year 1955. This appeal from that action was made on March 30, 1959.

After the appeal was filed, the Franchise Tax Board requested that it be dismissed on the ground that the Appellant's rights and powers were suspended.

On November 30, 1959, Appellant paid the tax due for the year 1956 for the stated purpose of reviving its powers. The essence of Appellant's argument is that a suspension should not prevent a corporation from contesting a proposed assessment of a franchise tax. It emphasizes that it remained in existence only to defend against the proposed assessment in question.

In reply, the Franchise Tax Board maintains that the points raised by the Appellant are not material; that Appellant has not complied with the requirements for a revivor of its

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powers including a requirement that it pay taxes for the years after 1956; and that, in any event, a revivor would not retroactively validate this appeal. The Franchise Tax Board concludes that after Appellant's powers are properly revived and the assessment for the year 1955 is paid, Appellant may file a claim for refund and, if the claim is denied, an appeal may then be taken pursuant to Sections 26075 et seq. of the Revenue and Taxation Code..

The request for a dismissal must be granted. Section 23301 of the Revenue and Taxation Code 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 ..." for failure to pay a franchise tax which is due. While under suspension for non-payment of taxes a corporation is "shorn of all rights save those expressly reserved 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; Cleveland v. Gore Bros., 14 Cal. App. 2d 681; Ocean Park Bath House & Amusement Co. v. Pacific Auto Park Co., 37 Cal. App. 2d 158; Baker v. Farra, 78 Cal. App. 2d 578; Fidelity Metals Corp. v. Risley, 77 Cal. App. 2d 377; Alhambra-Shumway Mines, Inc. v. Alhambra Gold Mine Corp. 155 Cal. App. 2d 46.) We have previously held specifically that a suspended corporation may not appeal to this Board. (Appeal of Atlantic & Pac. Wrecking Co., Cal. St. Bd. of Equal., July 22, 1958 (CCH 2 Cal. Tax Cases, Par. 200-899), (P-H St. & Loc. Tax Serv., Cal., Par. 13, 180).)

There is nothing in the pertinent statutes or in the decided cases which permits an exception, allowing a corporation to exercise its powers to the extent of contesting a proposed assessment for a given year in a case where the suspension is for failure to pay the tax for a succeeding year. We cannot take it upon ourselves to read such an exception into the statutes.

Even if Appellant were now revived, the revivor would not validate this appeal. Pursuant to Section 25666 of the Revenue and Taxation Code, the action of the Franchise Tax Board on a protest to a proposed assessment becomes final thirty days after the notice of action is issued unless an appeal is made within that time. Since there is no provision therefor in the statutes, a revivor may not be given a retroactive effect. (Ransome-Crummey Co. v. Superior Court, supra.) In Cleveland v. Gore Bros., supra, it was held that the statute of limitations with respect to-a cause of action was not tolled from the time that a suspended corporation commenced the action until the corporation was revived. Upon the same principle, the time limitation for filing this appeal would not be tolled or extended pending a revivor of the powers of the Appellant.

