BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
SPORTS PUBLICATIONS, LTG.)

Appearances:

For Appellant: Walter B. Lomax, Certified Public Accountant

For Respondent: Israel Rogers, Assistant Counsel

O P I N I O N

This appeal is made pursuant to Section 26077 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of Sports Publications, Ltd., for a refund of franchise tax and interest in the total amount of $79.45 for the taxable year 1959.

Appellant was incorporated under the laws of California on January 7, 1953, at which time it prepaid the then minimum franchise tax of $25. Effective June 24, 1959, the minimum tax prescribed under the Bank and Corporation Tax Law was increased from $25 to $100. (Stats. 1959, ch. 1127, p. 3212.) Section 18 of Chapter 1127 specifically provided that:

> If a corporation's income year ended on or before the effective date of this act the minimum tax shall be twenty-five dollars ($25); if its income year ends after such date the minimum tax shall be one hundred dollars ($100). (Stats. 1959, ch. 1127, p. 3221.)

The sole question presented by this appeal is whether the minimum tax due from Appellant for its first year, ending December 31, 1959, is $25 or $100.

Appellant does not deny that its income year ended after the effective date of the 1959 amendment. The Legislature, therefore, clearly expressed its intention to apply the higher minimum tax to Appellant. Appellant argues, however, that the minimum tax cannot be retroactively changed by the Legislature once it has been paid. This contention is without merit for it is contrary to the established law of California.

American States Water Service Co. v. Johnson, 31 Cal. App. 2d 606 [88 P.2d 770], concerned the validity of an amendment to the Bank and Corporation Franchise Tax Act, adopted in June of

1935, which increased the rate and income measure of the 1935 tax liability after the taxpayer had already paid the $25 minimum previously required for that year. Recognizing that the franchise tax should be treated in its application as a license or excise tax, the court, at page 613, said:

> We are of the opinion the 1935 amendment to Section 14 of the franchise tax act does not unlawfully interfere with the vested right of the Appellant to conduct its business in California during the year 1935 merely because that corporation paid a nominal tax of $25 for that privilege before the amendment became effective. This is true for the reason that the tax is in the nature of an excise which is always within the power of the legislative department of government to change or increase during the term for which it is imposed.

It is now well settled that taxes for the current year may be increased at any time during the year. (Holmes v. McColgan, 17 Cal. 2d 426 [110 P.2d 428], cert. denied, 314 U.S. 636 [86 L. Ed. 510]; Sunset Nut Shelling Co. v. Johnson, 49 Cal. App. 2d 354 [121 P.2d 849].) We think that this principle is applicable regardless of whether the tax is measured by the taxpayer's income or is a fixed minimum amount. Accordingly, the Respondent properly imposed the $100 minimum tax on Appellant for the year 1959.

ORDER

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 26077 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claims of Sports Publications, Ltd., for a refund of franchise tax and interest in the total amount of $79.45 for the taxable year 1959, be and the same is hereby sustained.

Done at Sacramento, California this 10th day of January, 1963, by the State Board of Equalization.

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

ATTEST: Dixwell L. Pierce, Secretary