



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
CELLERON REALTY CORPORATION)

For Appellant: J. D. Elliott & Co. and Carl Rothfuss,
Certified Public Accountants

For Respondent: Burl D. Lack, Chief Counsel;
Peter S. Pierson, Assistant 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 Celeron Realty Corporation against proposed assessments of additional franchise tax in the amounts of \$908.65 and \$3,155.85 for the taxable years 1958 and 1959, respectively.

The Franchise Tax Board contends that Appellant may not maintain this appeal because its corporate powers, rights and privileges have been forfeited.

Appellant is a New York corporation with its principal office in that state. It began doing business in California on August 20, 1952, and has never effected a withdrawal by filing a certificate of withdrawal with the Secretary of State, as required by Section 23331 of the Revenue and Taxation Code.

On October 17, 1960, the Franchise Tax Board issued the notices of proposed assessment now on appeal. Appellant protested the assessments and notices affirming Respondent's action were mailed to Appellant on February 14, 1962. The instant appeal was then filed with this Board on March 12, 1962.

Meanwhile, due to the fact that Appellant had failed to file a return or pay tax for the income year 1960, taxable year 1961, Respondent issued a demand for a return and notice of arbitrary levy of tax on August 25, 1961. Appellant filed a delinquent return but failed to pay the tax. Following a final demand for payment, made by Respondent on November 28, 1961, Respondent on January 2, 1962, transmitted to the Secretary of State the name of Appellant as a delinquent taxpayer, pursuant to Section 23302 of the Revenue and Taxation Code. Notice of this action did not reach Appellant until March 1962, subsequent to the filing of this appeal.

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Section 23301 provides that "Except for the purpose of amending the articles of incorporation to set forth a new name, ... the exercise of the corporate powers, rights and privileges of a foreign taxpayer in this State shall be forfeited ..." if it fails to pay its franchise tax by the end of the twelfth month following the close of the income year. Section 23302 provides that the forfeiture is effective when the name of the delinquent taxpayer is transmitted to the Secretary of State.

Appellant has not shown that its corporate powers, rights and privileges have been revived. Therefore, Appellant may not prosecute its appeal before this Board, and this appeal must be dismissed. (Alhambra Shumway Lines, Inc. v. Alhambra Gold Mine Corp., 155 Cal. App. 2d 46 [317 F. 2d 649]; Appeal of Western Miracle Water Softener, Inc., Cal. St. Bd. of Equal., Oct. 13, 1959, 2 CCH Cal. Tax Cas. Par. 201-337, 2 F-H State & Local Tax Serv. Cal. Par. 13213; Appeal of Lomita Plaza, Inc., Cal. St. Bd. of Equal., March 7, 1961, CCH Cal. Tax Hep. Par. 201-697, 2 P-H State & Local Tax Serv. Cal. Par. 13247.)

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 Celeron Realty Corporation from the action of the Franchise Tax board on its protest against proposed assessments of additional franchise tax in the amounts of \$908.65 and \$3,155.85 for the taxable years 1958 and 1959, respectively, be and the same is hereby dismissed.

Done at Sacramento, California, this 7th day of August, 1963, by the State Board of Equalization.

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

ATTEST: H. F. Freeman, secretary