



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
ACME ACCEPTANCE CORPORATION }

Appearances:

For Appellant: Christopher P. Miller,
Certified Public Accountant

For Respondent: Crawford H. Thomas,
Associate Tax Counsel

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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 Acme Acceptance Corporation against a proposed assessment of additional franchise tax in the amount of \$1,272.89 for the taxable year ended May 31, 1954.

Appellant was incorporated under the laws of California on June 11, 1952, for the purpose of financing consumers' contracts for the purchase of merchandise. It adopted a fiscal year ending May 31.

The issue presented in this appeal is whether Appellant did business for a full year prior to May 31, 1953. If it did so, its tax for the year ended May 31, 1954, is to be measured by its income for the year ended May 31, 1953, and if not, its tax for the year ended May 31, 1954, is to be measured by the income earned in that year. (Rev. & Tax. Code, § 23222.) The assessment in dispute is based upon Respondent's determination that Appellant did not do business for a full year prior to May 31, 1953.

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Although a literal application of the statute would have required Appellant to commence business by June 1, 1952, in order to complete a full 12 months of business before May 31, 1953, Respondent's regulations provide that "a period of more than one-half a calendar month may be treated as a period of one month." (Cal, Admin. Code, tit. 18, reg. 23221-23226, subd. (b).) Thus, Respondent concedes that if Appellant commenced business on or before June 15, 1952, it may be considered to have done business for a full 12 months prior to May 31, 1953.

Following are the events which occurred shortly before and after Appellant's incorporation:

1. During February, April and May of 1952, Appellant's two incorporators discussed with a least three prospective customers the possibility of financing contracts for them.
2. At some time before June 11, 1952, Appellant's incorporators discussed with a bank representative the possibility of the bank's discounting or making loans on the contracts to be acquired by the proposed corporation,
3. On June 11, 1952, Appellant was incorporated, with no one person acquiring more than 50 percent of its stock,
4. Insurance policies relating to workmen's compensation and personal property were acquired in Appellant's name, with coverage commencing on June 11 and June 12, 1952.
5. On June 12, 1952, the first meeting of Appellant's directors was held. At this meeting the contemplated activities of Appellant and particularly its proposed location were discussed. There is no indication that prior acts of the incorporators were ratified at that or any other time,
6. On June 16, 1952, Appellant hired a manager and filed an application for a personal property broker's license,
7. Appellant opened a bank account and made its first deposit therein on June 23, 1952.
8. On July 12, 1952, Appellant received a license to engage in business as a personal property broker,

"Doing business" is defined by Section 23101 of the Revenue and Taxation Code as "actively engaging in any transaction for the purpose of financial or pecuniary gain or profit."

In support of its position that it commenced business on or before June 15, 1952, Appellant relies to a considerable extent upon the activities of its promoters which took place before Appellant was incorporated. Under Respondent's regulations, if such activities would normally have constituted doing business and were ratified at the first

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meeting of the board of directors, the taxable year could be considered to have commenced from the date of incorporation, June 11, 1952. (Cal. Admin. Code, tit. 18, reg. 23221-23226, subd. (c).) We cannot give consideration to the pre-incorporation activities, however, since there is no indication that they were ratified or, for that matter, whether there was anything in the nature of a commitment which could have been the subject of ratification,

The only pertinent activities, therefore, are those which occurred between June 11, 1952, the date of incorporation, and June 15, 1952. These consisted only of obtaining insurance policies and discussing, at the first meeting of the directors, proposed locations for Appellant's office and its contemplated activities. We do not think that extended reasoning is necessary to support a conclusion that these actions were preliminary to doing business and did not constitute "actively engaging in any transaction for the purpose of financial or pecuniary gain or profit."

The activities which occurred between the date of incorporation and the crucial date of July 15, 1952, are readily distinguishable in character and scope from those involved in one of our opinions which Appellant cites, Appeals of Kleefeld & Son Construction Co., et al., Cal. St. Bd. of Equal., June 9, 1960, CCH Cal. Tax Rep, Par, 201-571, P-H State & Local Tax Serv, Cal, Par, 13227. That opinion concerned corporations each of which was wholly owned by one shareholder and was formed for the purpose of entering into a building construction venture with four other corporations. We there held that the taxpayers had commenced business because "Between the date of incorporation of each Appellant and the crucial date of July 16, 1948, each incorporator, for and on behalf of his corporation, was actively conducting negotiations, assembling plans, data, etc., preparatory to the execution of formal agreements with the other participating corporations, suppliers, contractors and the bank."

Our analysis of the facts and the law in the instant case reveals no error on the part of Respondent in denying Appellant's protest.

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, pursuant to Section 25667 of the Revenue and Taxation Code, that the action of the

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Franchise Tax Board on the protest of Acme Acceptance Corporation **against a** proposed assessment of additional franchise tax in the amount of **\$1,272.89** for the taxable year ended May 31, 1954, be and the same is hereby sustained,

Done at Sacramento, California, this 11th day of December, 1963,
by the State Board of Equalization.

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

ATTEST: H. F. Freeman, Secretary

