



64-SBE-036

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
MONTGOMERY LAND COMPANY)

For Appellant: John C. Montgomery, President

For Respondent: Peter S. Pierson, Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to section 26077 of the Revenue and Taicatlon Code from the action of thi Franchise Tax Board in denying the claim of Montgomery Land Company for a refund of franchise tax in the amount of \$755.22 for the income and taxable year ended October 31, 1961,

Appellant was incorporated under the laws of California on November 16, 1959, for the purpose of acquiring and operating citrus orchards. Its initial return, filed for the period ended October 31, 1960, reflected a net loss., Appellant's net income for the fiscal year begun November 1, 1960, and ended October 31, 1961, was \$15,549.41. Appellant paid a tax measured by this income for its third taxable year. only.

Relying upon section 23222 of the Revenue and Taxation Code, respondent demanded additional tax from appellant, asserting that the tax for appellant's second taxable year, i.e., the taxable year ended October 31, 1961, should have been based upon the net income earned during its second year of operations, i.e., the income year ended October 31, 1961. The basis for this additional assessment was a determination by respondent thit appellant did not do business for a full 12 months in its first taxable year, ended October 31, 1960. Appellant paid the additional tax assessed and claimed a refund, alleging that its first return did cover a 12 months

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period and that the second year's tax was therefore properly measured by the first year's income, under section, 23222 of the Revenue and Taxation Code. Respondent disallowed appellant's **claim** for refund.

The sole issue raised by this **appeal is**: Did appellant do business for a full **12** months prior to October 31, **1960, the end** of its first taxable **year**?

Regulation **23221-23226**, subdivision (c), title 18 of the California Administrative Code states in part:

The first taxable year begins when the corporation **commences** to do business, which may be at any time **after** the articles of incorporation are filed and generally subsequent to the time **the** first board of directors meeting is held . . .

Under this regulation, November 16, 1959, the, date of incorporation, was the earliest possible date on which **appellant's** first taxable year could have begun.

Appellant argues that a corporation which does business for 15 days of a **30-day** month should be deemed to have been doing business for a full month. This argument is based on **our decision** in 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.** The particular paragraph in that opinion upon which appellant relies **reads** as follows:

During the year involved, former **Section 13(c)** of the Bank and **Corporation Franchise Tax Act** (now Section 23222 of the Revenue and Taxation Code) provided that the tax of a corporation for its second taxable year was to be measured by its net income **for** its first year unless it did business for less than **12 months in** its first year. In the **latter case** the tax for the second taxable **year was to** be measured by the net income for **the second** taxable year. The regulations of the Franchise Tax Board provide that in making the computation a period of less than **15 days** shall be **disregarded and** a period of **15 days shall be treated** as one month. (**Reg. 23221-23226**, Title 18, **Calif. Admin. Code.**)

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In 1956, however, regulation 23221023226, subdivision (b), title 18 of the California Administrative Code was amended to read:

... after qualification or after having filed its articles of incorporation with the Secretary of State, a period of one-half month may be disregarded provided the corporation was not doing business in and received no income from sources in the State during such period and a period of more than one-half a calendar month may be treated as a period of one month . . .

Fifteen days of a **30-day** month is not "**more** than one-half a calendar month" and cannot, therefore, be treated as a period of one month.

Although it may appear harsh that the application of the tax should rest upon whether appellant began business on November 15 or on November 16, the apparent harshness is an inescapable consequence of drawing a line. All cases must fall on one side of the line or the other and some inevitably will be close. Respondent has ameliorated the literal requirement of the statute by permitting a period of more than **11-1/2** months to be treated as 12 months. Appellant, however, has not met the requirement as thus relaxed.

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 **26077** of the Revenue and Taxation Code, that the

