



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of
CONSTRUCTION INDUSTRIES EXPOSITION
AND HOME SHOW OF SOUTHERN CALIFORNIA

Appearances:

For Appellant: Harrison Harkins, Attorney at Law
For Respondent: Burl D. Lack, Chief 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 Construction Industries Exposition and Home Show of Southern California against proposed assessments of additional franchise tax in the amounts of \$757.60, \$2,280.26 and \$1,174.29 for the income years-ended September 30, 1958, 1959 and 1960, respectively.

Appellant was formed under California law in August 'of 1945 as a nonprofit corporation. It issued no stock but gave a membership certificate for each \$500 contribution, Appellant limited its membership to general construction contractor organizations and subcontractor organizations, whose members perform jobsite activities of the building Industry in Southern California, and to the Los Angeles Chamber of Commerce, It has fifteen members, in all, representing over 6400 jobsite contractors. These member-organizations include the Associated General Contractors of America, the Building Contractors Association of California, Inc., the Home Builders Association of Los Angeles, Orange and Ventura Counties, and various associations representing the plumbing, electrical, plastering, roofing, etc., trades. Each of appellant's members is a non-profit organization, classed as a tax exempt business league.

Appellant's bylaws state that its objective is "to promote better service to the public and to promote better

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relationships between the building industry and the public, through the medium of expositions and home shows in Southern California, and through other educational means." Appellant maintains a permanent office and staff for the purpose of conducting an annual home show, which is appellant's major activity. Each year it engages a suitable site for the show and arranges for the sale or sublease of space to persons wishing to exhibit products and techniques incident to the construction or home industry. An effort is made to limit the number of exhibitors for each class of product or technique in order to provide variety. Approximately one-third of the exhibit space is used for model homes, exhibits of the home furnishing and decorating industry and of the horticultural and floral industry, for which no rental is charged,

The majority of the show's exhibitors are manufacturers or distributors of commercial products used in home construction, who exhibit at the show for the purpose of interesting the public in the merits of their products. Less than one percent of the exhibitors are appellant's members or members of the associations that make up appellant's membership, since most of such individuals or firms are jobsite contractors.

Sales personnel for the individual exhibitors are in attendance at their booths and the distribution of souvenirs, literature, etc., is permitted. With minor exceptions, such as pitchmen selling small household gadgets, however, exhibitors do not sell their products directly to the public at the shows as is common at marketing or trade fairs.

Appellant's show is widely publicized and professional entertainment is provided as an added attraction to the public. Appellant derives its income from the sale of exhibition space, tickets, programs, advertising space in the programs, and miscellaneous items. It also earns interest income on the investment of its reserves in government bonds and a savings account. While appellant was organized as a nonprofit corporation and has budgeted its shows with the object of merely recouping its costs, it accumulated a substantial surplus and has returned to its members their original contributions,

In December of 1946 appellant was granted tax exempt status as a business league by the federal authorities under section 101(7) of the 1939 Internal Revenue Code (now Int. Rev. Code of 1954, § 501(c)(6)). It has remained so classified to date. Subsequently, appellant was granted a similar exemption under section 4, subdivision (6)(f) of the California Bank and Corporation Franchise Tax Act (now Rev. & fax, Code § 23701e).

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On November 2, 1959, the Franchise Tax Board revoked appellant's tax exempt status, the revocation to be effective *commencing* with the Income year ended September 30, 1958. The correctness of that action is the sole question before us.

Section 23701e of the Revenue and Taxation Code exempts from the franchise tax "Business leagues, chambers of commerce, real estate boards, or boards of trade, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual. Respondent's regulations interpreting the above provision state in part :

The words "private shareholder or individual!" ... refer to persons having a personal and private interest in the activities of the organization, (Cal. Admin. Code, tit, 18, reg. 23701, subd. (c).)

A business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. An organization whose purpose is to engage in a regular business of a kind ordinarily carried on for profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not a business league'... (Cal, Admin. Code, tit, 18, reg. 23701e.)

These provisions are substantially the same as those found in the federal code and regulations, (See Int. Rev. Code of 1954, § 501(c)(6), Treas. Reg. §§ 1.501(a)-1(c) and 1.501(c)(6)-1.)

The requirements for an-exempt business league may be summarized as follows: (1) It must be an association of persons having a common business interest. (2) Its purpose must be to promote that common business interest. (3) Its

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activities should be directed toward the improvement of business conditions in one or more lines of business as distinguished from the performance of particular services for individual persons. (4) It should not be engaged in a regular business of a kind ordinarily conducted for profit. (5) It must not be organized for profit., (6) Its net earnings, if any, must not inure to the benefit of any private shareholder or individual, (American Automobile Association, 19 T.c. 1146, 1158.)

It is respondent's position that appellant fails to meet these requirements in that (a) it fails, by definition, to qualify as a business league; (b) it performs particular services for individual persons; (c) its net earnings inure to the benefit of private individuals; and (d) it is engaged in a business ordinarily carried on for profit. A detailed discussion of each of these arguments would unduly prolong this opinion. Suffice it to say that they are largely constructed upon an erroneous premise, the assumption that a majority of the exhibitors at the annual home shows were the jobsite contractors who are the members of appellant's member-organizations. We find as a fact that such identity of interest was extremely minimal, in that less than one percent of the exhibitors were either directly or indirectly associated with appellant.

Appellant's home show is distinguishable from the situation detailed in a ruling issued by the Internal Revenue Service in 1958 (Rev. Rul., 58-224, 1958-1 Cum. Bull. 242), which was relied upon by respondent when it revoked appellant's exemption in 1959. Revenue Ruling 58-224 denied a business league exemption to an organization which was engaged primarily in the staging of an annual trade show, It was organized and operated under the sponsorship of the local chamber of commerce by salesmen and distributors interested in the sale and distribution of gift and housewares merchandise, Manufacturers exhibited their goods and retailers could place orders at the show. Advertising stressed the convenience and economy of making all purchases under one roof. It was concluded that the shows provided direct advertising and publicity for the distributors, eliminated substantial travel for them and provided, primarily, selling opportunities for such distributors, In short, particular services for individual persons, as distinguished from the improvement of business conditions generally, were being rendered.

In the instant appeal we find that appellant's activities promoted the building industry in general. It is clear that the annual home show was not intended to, nor did it in fact, provide a selling opportunity for the jobsite contractors who were affiliated with appellant through the membership of their respective trade associations, Any benefits those persons received from the conduct of the home shows were indirect and

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accrued alike to members and nonmembers engaged in the Southern California home building industry, That is, persons **connected** with the building industry were benefited because of the favorable economic climate in that industry fostered by appellant rather than as a direct result of being affiliated with appellant,

The **fact** that the manufacturers who exhibited at the home **show may** have received a more direct benefit will not disqualify appellant, Providing such a benefit was not appellant's purpose; rather, it was a natural step in an overall plan of proper action. To illustrate, where associations have undertaken large scale advertising campaigns promoting a particular industry, the fact that certain advertising firms, newspapers, magazines, etc., may have directly benefited thereby did not prevent exemption, (Washington State Apples, Inc., 46 B.T.A. 64; Rev. Rul. 55-444, 1955-2 Cum, Bull, 258.)

Although it is distinguishable, the case of Texas Mobil Home Ass'n, T.C. Memo,, Dkt, No: 84685, April 25, 1962, rev'd, 324 F.2d 691, is the closest that we have found to the facts before us, The association there involved conducted an annual show similar to that of appellant. The Tax Court held the association taxable on the ground that the show was deliberately aimed at producing a profit in order to defray expenses of other activities. Indicating that the profit was only incidental to exempt **purposes**, however; the Fifth Circuit reversed the **Tax Court**.

Since appellant's only substantial activity was the home show, we are not faced with a situation where the **profits** from the show were used to defray the expenses of other activities, Appellant was not operated-for profit. Its charges were set with a view to merely recouping its costs. The surpluses "which did occur were the understandable **result of** an inability to predict attendance. at the shows. Those **sur-**pluses could be wiped out by a few years of **low** attendance.

After careful consideration of all of respondent's arguments, we conclude that appellant has fulfilled the requirements of the code and regulations and is entitled to exempt status as a business league.

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,

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 25667 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of **Construction Industries Exposition** and Home Show of Southern **California** against proposed assessments of additional franchise tax in the amounts of \$757.60, \$2,280.26 and \$1,174.29 for the Income years ended September 30, 1958, 1959 and 1960, respectively, be and the same is hereby reversed,

Done at Sacramento, California, this 17th day of November, 1964, by the State Board of Equalization.

Paul R. Leck Chairman
John W. Lynch Member
Richard Stein Member
Scott Peck Member
_____ Member

Attest

W. H. H. H.

Secretary