

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
AGRICULTURAL EXCHANGE CORPORATION)

For Appellant: David R. Harrison and
Francis Willmarth,
Attorneys at Law

For Respondent: Burl D. Lack, Chief Counsel
Peter S. Pierson,
Associate Tax Counsel

OP- I N I -ON

This appeal is made pursuant to section 26077 of the Revenue and Taxation Code from the action of the Franchise Tax Board denying the claim of Agricultural Exchange Corporation for refund of franchise tax in the amount of \$1,597.00 for the income year 1963.

Appellant is the corporate attorney in fact for the Agricultural Insurance Exchange. All of appellant's income is derived from, and all of its property is used exclusively in, its sole business-as attorney in fact for that exchange.

On February 28, 1964, appellant paid \$1,697.00 in franchise tax for the taxable year 1964, based upon its income in 1963. Subsequently appellant filed a timely claim for refund in the amount of \$1,597.00, the entire earlier remittance less \$100.00 minimum franchise tax. Respondent denied that claim for refund, and this appeal followed.

In its regular session of 1963 the California Legislature passed Senate Bill No. 884, containing amendments to section 12003 of the Revenue and Taxation Code and section 1530 of the Insurance Code. Following its passage, Senate Bill No. 884 was approved by the Governor on July 19, 1963, and was filed with the Secretary of State on July 24, 1963.

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By those 1963 amendments to section 12003 of the Revenue and Taxation Code, the definition of an "insurer" subject to a gross premiums tax was supplemented as follows (1963 changes underlined) :

12003. "Insurer" as used in this part includes each of the following:

(a) * * *

(b) Reciprocal or interinsurance exchanges together with their corporate attorneys in fact considered as a single unit.

(c) * * *

Senate Bill No. 884 amended relevant portions of section 1530 of the Insurance Code to read:

1530. In lieu of all other taxes, licenses or fees whatever, state or local, each exchange and its corporate attorney in fact considered as a single unit shall together pay annually on account of the transaction of such business in this State, the same fees as are paid by mutual insurers transacting the same kind of business, and the annual tax imposed by Section 14 4/5 of Article XIII of the Constitution of the State of California and by the applicable provisions of the Revenue and Taxation Code, except that each corporate attorney in fact of a reciprocal or interinsurance exchange shall be subject to all taxes imposed upon other corporations doing business in the State, other than taxes directly attributable to property used exclusively in or on income derived from its principal business as corporate attorney in fact. In any event, such corporate attorney in fact shall file an annual return and pay the minimum tax provided for by Section 23151 of the Bank and Corporation Tax Law....
(1963 amendments underlined.)

The third section of Senate Bill No. 884, added Kay 9, 1963, by an Assembly amendment to the original bill, provided: "The provisions of this act shall become operative on January 1, 1964."

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Appellant contends that since these changes in the law became operative on January 1, 1964, they are applicable in determining its franchise tax liability for the taxable year 1964, and they cause appellant to be exempt from any franchise tax other than the \$100.00 minimum tax for the taxable year 1964. Respondent argues that the specifically stated operative date, January 1, 1964, renders these amendments applicable only to income years beginning on or after that date, and appellant is therefore still liable for franchise tax for its taxable year 1964, as measured by its 1963 income.

This precise issue was recently litigated in the case of Farmers Underwriters Ass'n v. Franchise Tax Bd., *242 Cal. App. 2d ____ [51 Cal. Rptr. 686], decided on May 31, 1966. The parties there presented arguments comparable to those propounded by appellant and respondent herein, and the District Court of Appeal sustained the Franchise Tax Board in its contention that the 1963 amendments to section 12003 of the Revenue and Taxation Code and to section 1530 of the Insurance Code were effective only as to income years beginning on or after January 1, 1964.

In reaching this conclusion the court observed that under the terms of section 23058 of the Revenue and Taxation Code, "unless otherwise specifically provided" the amendments in question would be applicable "in the computation of taxes for income years beginning after December 31st of the year preceding enactment," which in the case of this particular law would be the income year commencing January 1, 1963. The appellate court agreed with the trial court, however, that the specific statutory provision making the amendments operative as of January 1, 1964, had been inserted by the Legislature in order to nullify the otherwise controlling effect of section 23058 of the Revenue and Taxation Code, thereby indicating a legislative intent to delay the effectiveness of the changes until the income year 1964.

Guided by this recent decision on the identical issue presented here, we conclude that respondent's determination as to the proper effective date of the amendments was correct, and its action on this claim for refund must therefore be sustained.

O R D E R


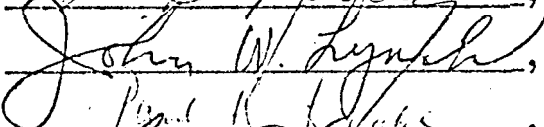
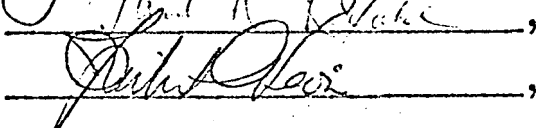
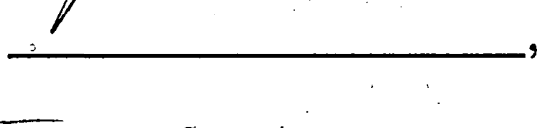
Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

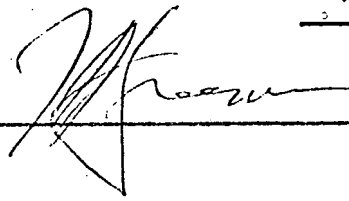
*Advance Report citation: 242 A.C.A. 576.

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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 claim of Agricultural Exchange Corporation for refund of franchise tax in the amount of \$1, 597.00 for the income year 1963, be and the same is hereby sustained.

Done at Sacramento , California, this 6th day of
October , 1966, by the State Board of Equalization.


_____, Chairman

_____, Member

_____, Member

_____, Member
_____, Member

ATTEST:  _____, Secretary