



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
TRUCK-A-WAY PRODUCE EXPRESS, INC. }

For Appellant: Max H. **Hoseit**
Attorney at Law

Gordon C. Weaver
Certified Public Accountant

For Respondent: Crawford H. Thomas
Chief Counsel

Robert S. Shelburne
Counsel

O P I N I O N

This appeal is made pursuant to section 26077 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Truck-A-Way Produce Express, Inc., for refund of franchise tax in the amounts of \$791.20 and **\$1,107.67** for the taxable years ended 'September **30, 1967**, and September **30, 1968**, respectively.

Appellant Truck-A-Way Produce Express, Inc., states that it was dissolved and ceased to do business on June **30, 1967**. Within one week, on July **6, 1967**, appellant filed a "**Certificate of Election to Wind Up and Dissolve**" with the Office of the Secretary of State. A tax clearance certificate, dated July 10, **1967**, **was** obtained from the Franchise Tax Board. However, it was April **19, 1968**, before appellant filed a "Certificate of Winding Up and Dissolution" with the Office of the Secretary of State.

For the taxable year ended September **30, 1967**, appellant prepaid a tax of **\$3,164.78**. Appellant claims that since it operated for only three-fourths of this taxable year,

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one-fourth of the prepaid tax should be refunded. Respondent denied this claim on the ground that appellant's franchise tax liability did not cease until the "Certificate of Winding Up and Dissolution" was filed with the Office of the Secretary of State. Whether this denial was **correct** is the first issue of this case.

For the taxable year ended September 30, 1968, appellant prepaid a tax of \$1,107.67 on March 15, 1967; however it did not file a return. Appellant claims that since it ceased doing business before this taxable year began, all of the prepaid tax should be refunded, Respondent denied this claim. **Whether respondent's** denial of appellant's claim for this taxable year was correct is the second issue of this case.

Appellant's claim for the taxable year ended September 30, 1967, is based upon section 23332 of the Revenue and Taxation Code which provides in part:

... any taxpayer which is dissolved or withdraws from the state during any taxable year shall pay a tax only for the months of the taxable year which precede the effective date of such dissolution or withdrawal, according to or measured by (a) the net income of the preceding income year or (b) a percentage of net income determined by ascertaining the ratio which the months of the taxable year, preceding the effective date of dissolution or withdrawal, bears to the months of the income year, whichever is the lesser amount.

Appellant argues that the effective date of dissolution was June 30, 1967, when appellant states that it ceased doing business.

However, section 23331¹ of the Revenue and Taxation Code provides in part:

For the purposes of this article, the effective date of dissolution of a corporation is the date on which the certified copy of the court decree, judgment or order declaring the corporation duly wound up and dissolved is filed in the office of the Secretary of State or the date on which the certificate of winding up and dissolution is filed in the office of the Secretary of State.

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On several prior occasions we have considered claims and fact situations similar to the instant ones and we have held that the explicit definition set forth in section 23331 must be used in applying the tax computation provision of section 23332. (Appeal of U.S. Blockboard Corp., Cal. St. Bd. of Equal., July 7, 1967; Appeal of Mount Shasta Milling Co., Cal. St. Bd. of Equal., Dec. 13, 1960.) Since appellant did not file the "Certificate of Winding Up and Dissolution" until well after the end of the taxable year in question, we must conclude that it is not entitled to a refund for that year.

Appellant's claim for the taxable year ended September 30, 1968, is based upon its allegation that it did not do any business during this year. However, section 23332 states "In any event, each corporation shall pay a tax not subject to offset for such period in an amount equal to the minimum tax prescribed by Section 23153." The period referred to by the statute is the portion of the taxable year preceding the effective date of dissolution which as discussed above is the date of filing of the "Certificate of Winding Up and Dissolution." Since appellant did not file this certificate until well after the year in question began, appellant is at least liable for a tax which is equal to the minimum tax prescribed by section 23153. (Appeal of Master Putty Manufacturing Co., Inc., Cal. St. Bd. of Equal., Aug. 30, 1967; Appeal of California Consolidated Water Co., Inc., Transferee of Evergreen Service Co., Cal. St. Bd. of Equal., Aug. 30, 1967.)

Furthermore, if appellant was doing business during the taxable year ended September 30, 1968, it may be liable for an additional amount of tax and also for late filing penalties. These existing and potential tax liabilities of appellant for the taxable year at issue prevent us from granting any portion of its refund claim. We note that the Franchise Tax Board has stated that it will reconsider the claim relative to the taxable year ended September 30, 1968, when appellant files a return for this year.

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 26077 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Truck-A-Way Produce Express, Inc., for refund of franchise tax in the amounts of \$791.20 and \$1,107.67 for the taxable years ended September 30, 1967, and September 30, 1968, respectively, be and the same is hereby sustained, with the understanding that the Franchise Tax Board will reconsider appellant's claim for the latter year after a return has been filed.

Done at Sacramento, California, this 26th day of February, 1969, by the State Board of Equalization.

John W. Lynch, Chairman
Paul R. Leach, Member
Richard Allen, Member
_____, Member
_____, Member

Attest: [Signature], Secretary