



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
YOUNG WOMEN'S CHRISTIAN)
ASSOCIATION OF SANTA MONICA)

Appearances:

For Appellant: Mrs. Katharine Macintosh
Controller

Mrs. Ralph W. Jones
Board Member

For Respondent: John D. Schell
Counsel

OPINION _ _ _

'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 claims of the Young Women's Christian Association of Santa Monica for refund of franchise tax and interest in the total amounts of \$115, \$109, and \$103. for the income years ended February 28, 1965, 1966, and 1967, respectively.

The issue presented is whether appellant was required to file annual information returns.

Appellant organization was incorporated under the laws of California on November 21, 1939. It is exempt from the franchise tax under section 23701d of the Revenue and Taxation Code. During each of the three years here in- question, appellant received gross income in excess of \$25,000, but it did not file timely information returns. Upon the request of respondent, completed returns for the three years were filed on November 24, 1967. Because of late filing, the minimum franchise tax

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of \$100 plus interest of \$15, \$9, and \$3 for the respective three years was assessed pursuant to section 23772 of the Revenue and Taxation Code. Appellant paid the amounts assessed and filed claims for refund. On denial of the refund claims, this appeal was filed.

During the years under appeal basic memberships in appellant cost \$5. For an additional charge members were entitled to enroll in certain courses. Other activities and programs were also available to members for an additional fee. Some social functions were also held.

Appellant has furnished the following schedule concerning receipts:

<u>Receipts</u>	<u>Fiscal Year Ending</u>		
	<u>1965</u>	<u>1966</u>	<u>1967</u>
Community Chest	\$24,251.00	\$24,737.00	\$25,728.00
Contributions.	1,082.00	1,291.00	1,495.00
Memberships	4,384.00	4,475.00	3,875.00
Ways & Means	852.00	281.00	699.00
	<u>\$30,569.00</u>	<u>\$30,784.00</u>	<u>\$31,797.00</u>
Total Income :	\$53,224.00	\$55,111.00	\$55,362.00

"Ways & Means" receipts consisted of income from such events as rummage sales, luncheons and candy sales. Between 25 and 30 percent of persons taking out memberships did, not, avail themselves of membership benefits. Certain bequests and donations were received and contributions for camper-ships were also made. Appellant advises that since these items do not appear in the operating budgets it was not presently able to provide the amounts thereof.

Appellant principally contends it is a type of exempt corporation also excepted from the annual reporting requirement. It also relies on a letter dated May 16, 1967, from the Internal Revenue Service, in which the Service affirmed a prior ruling of April 21, 1941, and concluded that appellant had a "Religious, Educational, Charitable," purpose, was an exempt organization, and was not required to file an annual federal information return. Respondent takes the position that appellant does not come, within the exception provided by section 23772,

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subdivision (c) of the Revenue and Taxation Code because its purposes are not exclusively charitable .

The following are granted exempt status under the pertinent portion of section 23701d of the Revenue and Taxation Code:

Corporations organized and operated exclusively for religious, charitable, . . . or educational purposes, . . . no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation.

Section 23772 of the Revenue and Taxation Code excepts certain exempt corporations from the requirement of filing annual information returns including the following :

* * *

(a) A religious organization exempt under Section 23701d;

(b) An educational organization exempt under Section 23701d, if such organization normally maintains a regular faculty and curriculum and normally has a regularly organized body of pupils, or students in attendance at the place where its educational activities are regularly carried on; or

(c) A charitable organization, . . . exempt under Section 23701d, if such organization is supported, in whole or in part, by funds contributed by the United States or any state or political subdivision thereof, or is primarily supported by contributions of the general public....

During the years under consideration, similar exemptions were described in the federal code provisions. (Int. Rev. Code of 1954, §§ 501(c)(3) and 6033(a).)

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Respondent has construed section 23772, subdivision (c) to require that an exempt corporation be exclusively dedicated to a charitable purpose in order to be excepted from filing an annual information return. A similar interpretation would apply to an educational organization. We believe this construction of the statute is reasonable, and respondent's position herein must be upheld.

Each of the subdivisions, of section 23772 differentiates the treatment of organizations on the basis of their purpose as "religions; " "educational; " "organized for the prevention of cruelty to children or animals," and "charitable . " The construction of the statute by respondent results in limiting the number of exempt corporations which are not required to file information returns. This approach provides the administering agency with a greater input of information about the income sources of exempt corporations and, thereby, gives greater assurance of preserving the integrity of the revenue system. In addition, appellant has not established that more than 50 percent of its income was from contributions of the general public.

Respondent requires that more than 50 percent of a charitable organization's income and receipts must be derived from voluntary contributions and gifts made by the general public before it will be regarded as "primarily supported by contributions of the general public" within the meaning of section 23772, subdivision (c). This is also the federal view as indicated by a federal regulation (Treas. Reg. § 1.6033-1(g)(iii)), and we conclude this is a reasonable interpretation. Where a member is entitled to benefits or privileges for the payment of dues, the dues are not regarded as "contributions by the general public," and this is the position taken whether or not the benefits or privileges are utilized. (Rev. Rul. 68-432, 1968-2 Cum. Bull. 104; Rev. Rul. 54-565, 1954-2 Cum. Bull. 95.) The receipts labeled "Ways & Means" involved the purchasing of something of value, and appellant has not established that any portion thereof constituted donations or contributions. (Goldman v. Commissioner, 388 F.2d 476.) Therefore, while receipts from the "Community Chest" are regarded as contributions by the general public, the Schedule furnished us does not establish that appellant was "primarily supported by contributions of the general public" within the meaning of section 23772, subdivision (c).

The fact that the Internal Revenue Service did not require appellant to file information returns during

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the years in question is not determinative for state tax purposes. While noting the similarity between state and federal laws in this instance, we do not know what facts were **presented** to the Service and we do not choose to speculate with respect to the federal determination.

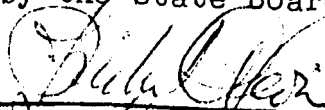
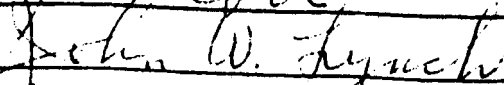
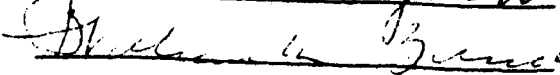
In view of the foregoing considerations, we conclude that during the audit period appellant was not excepted from filing annual information returns pursuant to the provisions of section 23772. Unlike certain penalty provisions which may be excused for reasonable cause, there are- no exceptions to the imposition of the minimum franchise tax for failure to file timely returns.


O R D E R

Fursuant 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 action of the Franchise Tax Board in denying the claims of the Young Women's Christian **Associa-**tion of Santa Monica for refund of franchise tax and interest in the amounts of \$115, \$109, and \$103 for the income years ended February 28, 1965, 1966, and 1967, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 6th day of July , 1971, by the State Board of Equalization.


_____, Chairman

_____, Member

_____, Member
_____, Member
_____, Member

ATTEST: 
_____, Secretary