



BEFORE THE STATE BOARD OF EQUALIZATION
 OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
 ROBERT F. FISCHEL PROFESSIONAL)
 CHIROPRACTIC CORPORATION)

For Appellant: Robert F. **Fischel**

For Respondent: James T. **Philbin**
 Supervising Counsel

OPINION

This appeal is made pursuant to section **26075**, subdivision (a), of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Robert F. Fischel Professional Chiropractic Corporation for refund of franchise tax in the amount of \$200.00 for the income year ended September 30, 1950.

Appeal of Robert F. **Fischel** Professional
Chiropractic Corporation

The question presented by this appeal is whether respondent properly determined that appellant was liable for the minimum franchise **tax** for the **income year** in issue.

Appellant, a California corporation, is engaged in the business of providing chiropractic services to the public. Prior to the beginning of the **subject income year**, appellant **sold** its practice in this state and moved its operations to Hawaii. Appellant's corporate activities in California during the appeal year were limited to the collection of accounts receivable and receipt of payments relating to the sale of its practice. Appellant has remained in existence in anticipation of a merger with a successor corporation formed in Hawaii.

Appellant filed a timely franchise tax return for the income year in issue on which it **claimed that it had incurred** no tax liability. Appellant subsequently paid the minimum tax of \$200 assessed by respondent. Appellant now claims entitlement to a refund of the \$200 on the grounds that it was virtually inactive in this state during the income **year** in issue, and because it retained its-corporate existence solely for the purpose of awaiting merger with a **successor** corporation in Hawaii.

With certain exceptions not relevant to this **appeal**, section 23153 of the Revenue and Taxation Code imposes an annual \$200 minimum tax on **every California** corporation not otherwise subject to the general franchise tax. The statute **also** provides that "[e]very such domestic corporation taxable under this section shall be subject to the said tax from the date of incorporation until the effective date of dissolution as provided in section 23331." Section 23331 provides that "the effective date of dissolution of a corporation is ... the date on which the certificate of winding up and dissolution is filed in the office of the Secretary of State." Thus, "[e]very domestic corporation is subject to the annual minimum tax from the date of incorporation **until the** certificate of dissolution is filed with the Secretary of State, even though the corporation may **cease** doing business prior thereto." (Cal. Admin. Code, tit. 18, reg. 23151-23154(b).)

The **record** of this appeal **reveals** that appellant did not file a certificate of dissolution with the Secretary of State prior to the beginning of the

Appeal of Robert F. Fischel Professional
Chiropractic Corporation

appeal year. Accordingly, pursuant to the express statutory provisions cited above, appellant is liable for the minimum tax for its income year ended September 30, 1980, even though its activities in California were limited during that year, and despite its contention that it retained its corporate existence pending a merger with its Hawaiian successor. (See Appeal of Vitmora Company, Cal. St. Bd. of Equal. , Sept. 27, 1978; Appeal of Truck-A-Way Produce e s s , Inc., Cal. St. Bd. of Equal. , Feb. 26, 1969.)

For the reasons set forth above, respondent's action in this matter will be sustained.

Appeal of Robert F. Fischel Professional
Chiropractic Corporation

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 action of the Franchise Tax Board in denying the claim of Robert F. Fischel Professional Chiropractic Corporation for refund of franchise tax in the amount of \$200.00 for the income year ended September 30, 1980, be and the same is hereby sustained.

Done at Sacramento, California, this 29th day of June , 1982, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Dronenburg, and Mr. Nevins present.

William M. Bennett , Chairman
Ernest J. Dronenburg, Jr. , Member
Richard Nevins , Member
_____, Member
_____, Member