



Appeal of Bancontrol Systems Incorporated

The principal issue presented by this appeal is whether a California corporation which commences doing business during the taxable year following its year of incorporation is required to file a return and pay franchise tax for the year of incorporation.

Appellant's articles of incorporation were filed with the Secretary of State on December 7, 1977. With the filing of its articles, appellant was required to prepay a minimum franchise tax of \$200. (Rev. & Tax. Code, § 23221.) Appellant elected to file its franchise tax returns on a calendar year basis and commenced doing business on January 1, 1978.

Upon audit, respondent discovered that appellant had failed to file a return for the period from December 7, 1977 through December 31, 1977. Respondent also determined that appellant had failed to pay the minimum franchise tax of \$200 for the taxable year ended December 31, 1978. Consequently, respondent issued a demand for the delinquent return and for payment of the minimum franchise tax. Respondent also imposed a penalty for failure to file a timely return.

After filing a return and paying the tax and penalty for the aforementioned years, appellant filed the subject claim for refund. It is appellant's position that it should not be required to file a return and pay tax for the period from December 7, 1977 through December 31, 1977 since it did not conduct business or earn income during that period. After reviewing the relevant statutory authority, we must conclude that appellant's position, is without merit and that respondent has acted properly in this matter.

Section 23153 of the Revenue and Taxation Code provides, in pertinent part:

(a) Every corporation not otherwise taxed under this chapter-. . . shall pay annually to the state a tax of [two hundred dollars (\$200)].

* * *

Every such domestic corporation taxable under this section shall be subject to said tax from the date of incorporation until the effective date of dissolution. ...

A California corporation which refrains from doing any business during a particular income year is "not otherwise taxed under this chapter" within the meaning of section 23153; whether or not such income year constitutes a full twelve months, the corporation is subject to the \$200 minimum franchise tax imposed by section 23153. (See Appeal of Vitmora Company, Cal. St. Bd. of Equal., Sept 27, 1978; Appeal of

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Mission Valley East, Cal. St. Bd. of Equal., Oct. 7, 1974.) The record on appeal indicates that appellant was incorporated on December 7, 1977; that it did not commence doing business until January 1, 1978, and that it elected to file its franchise tax returns on a calendar year basis. Accordingly, for the period from December 7, 1977 through December 31, 1977, appellant was subject to the \$200 minimum franchise tax imposed by section 23153.

Revenue and Taxation Code section 23151.1 provides, in pertinent part:

(a) With respect to corporations, ... which commence doing business within the state after December 31, 1971, the tax for the taxable year of commencement, ... shall be the minimum tax prescribed in Section 23153. (Emphasis added.)

Appellant commenced doing business on January 1, 1978, the first day of its taxable year ending December 31, 1978. Accordingly, pursuant to section 23151.1, appellant was subject to the \$200 minimum franchise tax prescribed in section 23153 for its taxable year of commencement.

Section 25401, subdivision (a), of the Revenue and Taxation Code provides, in relevant part, as follows:

[E]very taxpayer subject to the tax imposed by this part shall, within 2 months and 15 days after the close of its income year, transmit to the Franchise Tax Board a return ... specifying for the income year, all such facts as it may by rule, or otherwise, require in order to carry out the provisions of this part.

For purposes of section 25401, the term "income year" is defined as follows: "in the case of a return made for a fractional part of a year, the period for which such return is made." (Rev. & Tax. Code, § 23042.) Appellant's election to adopt a fiscal year on a calendar year basis effectively closed and defined the taxable period from December 7, 1977 through December 31, 1977. Accordingly, pursuant to section 25401, appellant was required to file a return within two months and fifteen days after the close of its income year ended December 31, 1977.

Section 25931 of the Revenue and Taxation Code provides for the imposition of a penalty for failure to file a timely return "unless it is shown that the failure is due to reasonable cause." Moreover, ignorance of the law does not constitute reasonable cause for failure to file a timely return. (Appeal of Escondido Chamber of Commerce, Cal. St. Bd. of Equal., Sept. 17, 1973.) Since appellant's only explanation for its failure to file a timely return for the income year

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ended December 31, 1977 is the erroneous belief that no return is required for a taxable period during which a corporation refrains from doing business, we conclude that the failure was not due to reasonable cause.

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

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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 Bancontrol Systems Incorporated for refund of additional franchise tax, a penalty, and interest in the total amount of \$295.35 for the income year 1977, be and the same is hereby sustained.

Done at Sacramento, California this 17th day of November, 1982, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg and Mr. Nevins present.

William M. Bennett, Chairman

'Conway H. Collis, Member

Richard Nevins, Member

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Member