

Appeal of Escondido Chamber of Commerce

Appellant, a nonprofit corporation, is exempt from franchise tax as a chamber of commerce pursuant to section 23701e of the Revenue and Taxation Code. Respondent informed appellant of its exempt status by letter dated March 15, 1954. The letter also notified appellant that it was required to file annual information returns with respondent and further indicated where the reporting forms might be obtained.

During the years in question sections 23772 and 23772.5 of the Revenue and Taxation Code provided that any exempt organization with a gross income in excess of \$25,000 was required to file a timely annual information return. Section 23772, subdivision (f), specifically provided that any organization which was required to file an annual information return and failed to do so was liable for the minimum tax for each year in which it failed to file.

Appellant failed to file the required information returns for each of the years in question until June 4, 1970, after being requested to do so by respondent. According to the information supplied on the late returns, appellant's gross income exceeded the \$25,000 limitation in each year. In accordance with section 23772, subdivision (f), appellant was assessed the \$100.00 minimum tax for each of the years in question. The resulting tax and interest were paid by appellant at which time it filed claims for refund. The claims were denied and this appeal followed.

There are 80,000 tax-exempt corporations in California. Respondent is charged with administering the laws applicable to these organizations. Since these organizations do not pay taxes, they exercise a public trust. To ensure that this trust is not violated respondent is required to determine whether each exempt organization operates within its own exclusive sphere and thus remains entitled to the exemption. The legislative scheme derived for carrying out this task includes the submission of either an annual statement or information return or the payment of a penalty for failure to

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do so. In this case the penalty was payment of the minimum tax. Previously, the penalty for noncompliance was more harsh; the organization lost its exemption and was required to reapply, for exempt status.

Appellant does not question the fact that it failed to comply with the strict letter of the law by not filing timely information returns. However, appellant does rely on respondent's policy of waiving the payment of the **minimum** tax where the failure to file was due to reasonable cause. Reasonable cause which will bring respondent's waiver policy into play may be defined as that which would have prompted a businessman of ordinary intelligence to have so acted under the same or similar circumstances. (See Appeal of J. B. Ferguson, Cal. St. Bd. of Equal., Sept. 15, 195'3.) The burden of establishing the existence of reasonable cause is, of course, on the taxpayer. (C. Fink Fischer, 50 T.C. 164; see also Appeal of the Diners' Club, Inc., Cal. St. Bd. of Equal., Sept. 1, 1967.) In this matter the only reasons given by appellant for not filing timely information returns were that it was unaware of its statutory duty to file and that it was not provided with the proper forms. Even assuming that appellant was never informed of its duty to file returns, it would not be excused from that requirement since ignorance of the law does not constitute reasonable cause for failure to file a timely return. (Charles E. Pearsall & Son, 29 B.T.A. 747; Appeal of J. B. Ferguson, supra.) However, respondent submitted a copy of the letter, properly addressed and dated May 15, 1954, which was mailed to appellant informing it not only of its exempt status but also of its duty to file annual information returns and where to obtain the forms. It is presumed that a letter properly addressed and mailed was received. (Idaho Maryland Mines Corp. v. Industrial Accident Commission, 174 Cal. App. 2d 693, 695 [345 P.2d 1091].) It may be true, as stated by appellant's representative, that appellant did not have the letter at the time of the hearing. However, a statement that in 1972 appellant did not have in its possession a letter mailed to it in 1954 is not sufficient to rebut the presumption of receipt. Furthermore, the fact that appellant operated as a nonprofit corporation from 1954 until the present strongly indicates receipt of the letter granting it exempt status.

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Appellant also asserts that respondent failed to send the proper Forms for the years in question. The record indicates that appellant never requested any forms until **March 1970**. The forms were mailed to appellant in May 1970. In any event, even if respondent had failed to provide forms such failure would not relieve appellant of the duty to file the required forms within the time prescribed. (Appeal of Normandy Investments, Ltd., Cal. St. Bd. of Equal., Sept. 12, **1969**; Rev. & Tax. Code, § 25405.)

Accordingly, it is concluded that respondent's action in this matter, as modified, was proper and must be sustained.

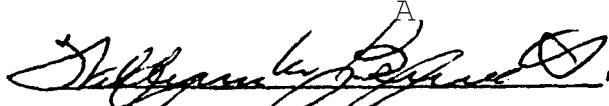


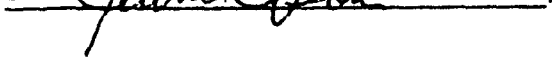
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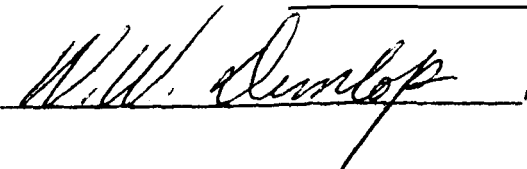
Pursuant to the views expressed in the opinion of the **board** on file in this proceeding, and good cause appearing therefor,

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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, as modified, in denying the claims of the Escondido Chamber of Commerce for refund of franchise tax in the amounts of \$130.03, \$124.03, \$118.03, and \$133.06 for the taxable years 1965, 1966, 1967, and 1968, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 17th day of September, 1973, by the State Board of Equalization.

 William A. Bennett, Chairman
 Scott Perry, Member
 John W. Dwyer, Member
 Robert A. ..., Member
_____, Member

ATTEST:  W.W. Devlop, Secretary