



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
MANNING SECURITIES, INC.)

For Appellant: Stevens Manning, Jr.,
in pro. per.

For Respondent: Crawford H. Thomas
Chief Counsel

Richard C. Creeggan
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 Manning Securities, Inc., for refund of franchise tax in the amount of **\$5,456.00** for the taxable year ended March 31, 1970.

The sole issue for determination is whether appellant's franchise tax liability for its second taxable year **was** properly based upon the net income from its first income and taxable year.

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Appellant is a stock brokerage firm which was incorporated in California on January 15, 1968. It commenced business in March of 1968 and adopted an accounting **period** ending on March 31st of each year.

On December 11, 1969, appellant filed a franchise tax return **covering** its first income year ended March 31, 1969, and its first and second taxable years ended March 31, 1969, and March 31, 1970, respectively. Net income for appellant's first income year was listed as **\$236,343.44**. Pursuant to section 23222 of the Revenue and Taxation Code, appellant computed its franchise tax liability for both its first and second taxable years on the basis of its net income for its first income and taxable year ended March **31, 1969**. The return showed a gross tax liability of **\$16,544.04** for appellant's first taxable year and **\$16,544.04** for its second taxable year. It also showed tax prepayments totaling **\$22,100.00**, leaving a net tax liability of **\$10,988.08**. This latter sum was never paid. Instead, appellant claimed a **refund of \$5,456.00**, which was the amount by which total prepayments exceeded what appellant claimed it owed **for both years**. This appeal was taken from respondent's denial of appellant's claim for refund.

Appellant contends that it would be inequitable for it to be required to pay **\$16,544.04** in franchise tax for its second taxable year ended March 31, 1970, because it had forecast substantial losses for that year. We find no merit in this contention.

The **Bank and Corporation Tax** Law imposes a franchise tax **upon a corporation's** privilege of doing **business** in California; as measured by the previous year's net income. (**Rev. & Tax. Code, § 23151**.) In the case of a commencing corporation section 23222 of the Revenue and Taxation Code provides:

(a) If a **taxpayer** commences to do business in this **state** during its **first** taxable-year its

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tax for that year shall be adjusted upon the basis of the net income received during that taxable **year**, at the rate applicable to that year, a credit being allowed for the prepayment of the minimum **tax**. The return for the first taxable year, ... shall also be the basis for the tax of said taxpayer for its second taxable year, if its first taxable year is a period of 12 months.... (Emphasis added.)

In the present case, appellant's taxable year did consist of a period of 12 months. Therefore, under the above section, appellant's franchise tax for its second taxable year was properly based on the net income for its first income and taxable year, regardless of its financial success in that second year of business. Since there is no provision in the law for the kind of exceptional treatment which appellant requests, we must sustain respondent's action in this matter.

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 Manning Securities, **Inc.,** for refund of franchise tax in the amount of **\$5,456.00** for the taxable year ended March 31, 1970, be and the same is hereby sustained-

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

William W. Burrows, Chairman
John W. Lynch, Member
Ray E. Seely, Member
Paul C. Horn, Member
_____, Member

ATTEST: *W. W. Dunlop*, Secretary