



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
MIWOK CORPORATION)

For Appellant: Gino P. Cecchi
Attorney at Law

For Respondent: James W. Hamilton
Acting Chief Counsel

Kendall Kinyon
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 claims of Miwok Corporation for refund of franchise tax in the amounts of \$940.87, **\$3,721.60**, **\$2,515.22**, and **\$1,569.45** for the income years ended June 30, 1967, 1968, 1969 and 1970, respectively.

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This appeal presents two issues for resolution. The first issue is whether appellant's refund claims for the income years ended June 30, 1967, and June 30, 1968, were timely. The second issue is whether appellant is entitled to larger interest deductions than respondent allowed.

Appellant is a California corporation engaged in the development and sale of land. Its franchise tax returns for the years in issue were audited by respondent in 1971. As a result of the audit, deficiency assessments were issued for each of the years in issue. The major adjustment for the income year ended June 30, 1967, arose from the partial disallowance of a deduction for interest expense resulting from two notes payable. The remainder of the deficiency for that year and all the deficiencies for the later years arose entirely from the disallowance of deductions claimed for late payment penalties paid to Marin County on certain improvement bonds.

Since appellant failed to protest the deficiency assessments, they became final and appellant paid them on May 9, 1972. Appellant then filed the refund claims **in issue on August 8, 1973.** Respondent denied the claims for the years ended June 30, 1967, and June 30, 1968, as untimely on the basis that the last date a timely claim for those years could have been filed was May 9, 1973. The other two claims were denied on the grounds that the penalty payments to Marin County were nondeductible. On appeal respondent now concedes that the deductions for the penalty payments were allowable in the last two years for which timely claims were filed. This concession results in partial refunds to appellant of \$145.53 and \$98.77 for the years ended June 30, 1969, and June 30, 1970, respectively.

Section 26073 of the Revenue and Taxation Code specifically provides that no refund shall be allowed unless a claim is filed within four years from the last day prescribed for filing the return, or one year from the date of overpayment, whichever period expires the later. The time prescribed for filing the franchise tax

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returns for the income years ending June 30, 1967, and June 30, 1968, was September 15, 1967, and September 15, 1968, respectively. Four years from the prescribed filing dates were September 15, 1971, and September 15, 1972, respectively. The last payments made on account of either the 1967 or 1968 fiscal income years were made on May 9, 1972. One year from that date was May 9, 1973. Therefore, the last day on which appellant could have filed timely claims for refund for 1967 and 1968 was May 9, 1973. Since appellant did not file its claims for those years until August 8, 1973, it is readily apparent that the claims were not timely filed. (Appeal of Valley Home Furniture, Cal. St. Bd. of Equal., July 31, 1972.)

Apparently, appellant also contends that it is entitled to larger interest deductions than respondent permitted. However, appellant has offered nothing to substantiate this claim. It is well settled that the taxpayer has the burden of establishing the right to claimed deductions, '[New Colonial 'Ice Co. v. Helvering, 292 U.S. 435 [78 L. Ed. 1348] (1933); Appeal of R. Edwin Wood, Cal. St. Bd. of Equal., Dec. 8, 1969.]' Since appellant has submitted no evidence to substantiate its claim for additional interest deductions we must conclude that respondent's determination was correct.

In accordance with the views set forth above we conclude that respondent's action in this matter was proper and must be sustained, subject to the concessions referred to above.

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 claims of Miwok Corporation, for refund of franchise tax in the amounts of \$940.87, \$3,721.60, \$2,515.22, and \$1,569.45 for the income years ended June 30, 1967, 1968, 1969, and 1970 respectively; be and the same is hereby modified to reflect respondent's concession with respect to the income years ended June 30, 1969, and 1970. In all other respects the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 15th day of December, 1976, by the State Board of Equalization.

_____, Chairman
_____, Member
_____, Member
_____, Member
_____, Member

ATTEST: W. W. Runkle, Executive Secretary