



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
UNITED LINENS, INC. }

For Appellant: J. H. Wistrom
Certified Public Accountant

For Respondent: Bruce W. Walker
Chief Counsel

Paul J. Petrozzi
Counsel

O P I N I O N

This appeal is made pursuant to section 26077 of the Revenue and Tazation Code from the action of the Franchise Tax Board in denying the claim of United Linens, Inc., for refund of franchise tax in the amount of \$200.00 for the taxable year December 1, 1973, through November 30, 1974.

Appeal of' United Linens, Inc.

Appellant, a California corporation, was incorporated on November 29, 1971. It adopted a fiscal year of December-1 through November 30, and commenced doing business on December 9, 1971. Inasmuch as it incurred a net- **loss** for the year December-1, 1971, through November 30, **1972**, under the then applic-able law appellant's tax **liability** for that period was a minimum tax-of. \$100. (Rev. & Tax. Code, §§ 23151, 23153, 23222.) Thereafter, its losses continued, and Ronald Williams-, its sole stockholder, decided to- dissolve- the- corporation..

On November 13, 1973, appellant's **accountant** wrote respondent and explained that-appellant was "planning on dissolution in the near future." He requested a- tax clearance certificate, and asked that a copy **be** forwarded to the **office** of the Secretary of State. Respondent replied by letter-of' December 3, 19-7'3, **explaining** that before the certificate- could be- issued'an **affidavit** must be furnished **stating the** date that business **ceased**, and returns filed and tax paid for the fiscal years **ended** November **30**, 1973, and November. 30, **1974**. Respondent **also** indicated, however, as an alternative, that the **certificate** could be issued **immediately** if' a third person filed an acceptable assumption of appellant's franchise. tax **liabilities**, agreeing to pay all accrued'or accruing liabilities for tax, penalty or Interest. Respondent enclosed copies of- the- appropriate form to be used.

Appellant's accountant **responded on December 11**, 19'73, and enclosed completed cop-ies of the form, in which Mr. Williams assumed such liabilities and provided respondent with all essential information. The letter read in part:

The corporation is completely. wound up and dissolved' and said corporation **is forwarding today** to the office of the Secretary, of State a certificate **to that effect**. Would you please rush. to the office of the- Secretary of State, your tax clearance, certificate so that the

Appeal of United Linens, Inc.

corporation's certificate of winding up and dissolution will bear confirmed filing marks by the Secretary of State no later than December 15, 1973.^{1/}

On that same date appellant distributed its existing cash balance to Mr. Williams. At that time Mr. Williams also mailed a previously executed "Certificate of Election to Wind Up and Dissolve" and a "Certificate of Winding Up and Dissolution" to the office of the Secretary of State together with a copy of the above letter to respondent. **The** latter certificate was returned by the Secretary of State's office on December 17, 1973, for correction of wording. It was corrected and returned to that office on December 20, 1973. Respondent issued its tax clearance certificate on December 18, 1973.

Subsequently, a tax return was timely filed in appellant's behalf for the income year December 1, 1972, through November 30, 1973. A net loss was reported. Because formal dissolution was not concluded by December 15, 1973, a return was also filed for the period December 1, 1973, through December 31, 1973.^{2/} Liability for a \$200 minimum tax was shown, a \$100 payment made, and a \$100 credit taken for the minimum tax paid for the first year of doing business. Mr. Williams did not believe tax was due for the subsequent period but a return was filed and tax paid to avoid any possible penalties.

1/ It is also alleged that during the same day the accountant telephoned respondent's tax clearance unit to request that it expedite the clearance.

2/ In determining the date of dissolution, a period of half a month is disregarded. (Cal. Admin. Code, tit. 18, reg. 23331 - 23334, subd. (b).) Thus, dissolution occurring on or before December 15, 1973, would be treated as happening on November 30, 1973.

Appeal of United Linens, Inc.

Consequently, with that return., the claim for refund was filed, in which it was urged that appellant was **completely** dissolved on **December 11, 1973**, but that this fact had merely not been acknowledged by the. state until after December 15, 1973, **because** of delays caused by respondent and, the Secretary of State.. Respondent denied. the claim on the basis that... in fact, the. corporate existence continued beyond: December **15, 1973**, thereby **subjecting** appellant to additional tax for the **subsequent year**, pursuant to **applicable** statutory provisions. (Rev. & Tax. Code, §§ 231.51, 23151.1, 23153, 23201.) Appellant then brought this timely **appeal**.

It is now contended that appellant's final act was its cash distribution of December **11, 1973**, and consequently it **should** be treated as **effectively** dissolved on November 30, **1973**. For this reason it is asserted that no tax is **assessable** for any period beyond that **date**.

We conclude that **appellant** was not effectively dissolved until after December 15, **1973**. **For franchise tax purposes**, 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. (Rev. & Tax. Code., § 23331; Appeal of Mount Shasta Milling Co., Cal. St. Bd.. of Equal., Dec. 13, 1960: Appeal of U.S.. Blockboard Corp., Cal. St. Bd. of Equal., July 7, 1967.) Before that certificate may be filed, however, a tax clearance certificate issued by respondent must be filed with the office of the Secretary of State. (Rev. & Tax. Code, § 23334,; Corp. Code, § 5201.) The latter, certificate was not filed with that office until after December 15, 1973. Moreover, the initial "Certificate of **Winding Up and Dissolution**" was inadequately worded, and therefore its lanauaae **had** to be corrected **before** it was acceptable for filing. (Cf. Appeal of Ida Arvida Rogers, Cal. St. Bd.. of Equal., Aug.. 10, 1950.) Consequently, even without considering the late **filing of** the tax certificate, there simply was no filing of **the basic** certificate on or before December 15, 1973.

Appeal of United Linens, Inc.

It is also urged that the tax certificate was requested in ample time to effect a complete formal dissolution by December 15, 1973, except for the alleged inefficiency of the office of respondent and of the office of the Secretary of State. Thus, appellant contends that the state is estopped to deny the dissolution because it allegedly prevented completion of the formal steps.

It is true that there are occasions for departure from the general rule that government may not **be** estopped by the conduct of its officers or employees. (Farrell v. County of Placer, 23 Cal. 2d 624 [145 P.2d 5701,] a proper case the government can be estopped even though imposition of a tax is required by statute. (Garrison v. State of California, 64 Cal. App. 2d 820 [149 P.2d 711]; La Societe Francaise v. California Emp. Comm., 56 Cal. App. 2d 534 [133 P.2d 47].) As a general rule, however, estoppel is invoked against governmental entities only where grave injustice would otherwise result. This rule is stressed in tax cases. (California Cigarette Concessions, Inc. v. City of Los Angeles, 53 Cal. 2d 865, 869 [3 Cal. Rptr. 675, 350 P.2d 715]; U.S. Fidelity & Guaranty Co. v. State Board of Equalization, 47 Cal. 2d 384, 389 [303 P.2d 10341; see also State Board of Equalization v. Coast Radio Products, 228 F. 2d 520.) Moreover, the doctrine of estoppel does not erase the duty of due care and therefore is not available for the protection of one who has suffered loss because of his own failure to act. (Hampton v. Paramount Pictures Corp., 279 F.2d 100, cert. denied, 364 U.S. 882 [5 L.-Ed. 2d 1031].)

Applying the foregoing principles, we conclude that the facts here do not establish that the doctrine should be invoked. Of particular significance is the circumstance that the initially mailed "Certificate of Winding Up **and Dissolution**" was inadequate. This factor would have caused the failure to meet the December 15, 1973, deadline, irrespective of the manner in which respondent processed the request for a tax clearance certificate. The Secretary of State's office was afforded only a relatively limited time by appellant to start and complete the events essential to correcting the defect and meeting the deadline. It should be noted that undoubtedly there are many demands imposed upon the time of that office by other similar requests, and other responsibilities. Even assuming prompt

Appeal of United Linens, Inc.

discovery of the defect in wording of the certificate, it is doubtful whether a proper certificate could have been filed by December 15. Additional necessary steps for such timely filing included delivery of the inadequate **certificate** to appellant's representative, correction thereof by him, and delivery of the corrected certificate back to the Secretary of State's office.

Furthermore, appellant is not aided by certain other facts in the record. The letter of November **13**, 1973, to respondent did not inform that agency of any specific deadline date. After receipt of that letter respondent clearly complied with the law by notifying appellant's representative well within 30 days of the security to be furnished as a condition of issuing the certificate. (Rev. & Tax. Code, § 23334; Appeal of Master Putty Manufacturing Co., Cal. St. Bd. of Equal., Aug. 30, 1967.) After the representative was notified, approximately seven days elapsed before, on December 11, respondent was sent the essential information. Some of the limited remaining time transpired while the letter to respondent was in the mail, and while it was thereafter being routed to respondent's tax clearance- unit. Moreover, respondent's time (as in the instance of the office of the Secretary of State) would have been subject to other demands. Verifying the statements contained in the **assumption** agreement also conceivably took additional time.

Consequently, in view of all the above factors we conclude that it was principally appellant which was responsible for the delay. Thus, we conclude that this is not an instance where the equitable estoppel doctrine should be invoked.

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,

Appeal of United Linens, Inc.

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 United Linens, Inc., for refund of franchise tax in
the amount of \$200.00 for the taxable year December 1, 1973,
through November 30, 1974, be and the same is hereby
sustained.

Done at Sacramento, California, this 3rd day of
February, 1977, by the State Board of Equalization.

William J. Smith, Chairman
Leo J. Kelly, Member
John K. Brown, Member
Erin Sanku, Member
_____, Member

ATTEST: *W. W. Dunlop*, Executive Secretary