

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
AIR MARKET TRAVEL CORPORATION)

For Appellant: Francis Cheung

For Respondent: Bruce W. Walker
Chief Counsel

Jeffrey M. Vesely
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 Air Market Travel Corporation for refund of franchise tax in the amount of \$200.00 for the income year 1976, taxable year 1977.

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The issue presented is whether, by failing to file a Certificate of Winding Up and Dissolution until April 18, 1977, appellant Air Market Travel Corporation became liable for the minimum franchise tax for the taxable year ended December 31, 1977. Appellant had prepaid the minimum franchise tax for the taxable year 1977, and after its dissolution, claimed a refund in the amount of \$200.00. Respondent disallowed the claimed refund on the ground that appellant's corporate existence continued into 1977, thus subjecting it to the minimum franchise tax for that year. This appeal followed.

Appellant was incorporated on June 11, 1976, and after suffering continuous losses, decided to cease doing business on December 31, 1976. On December 23, 1976, appellant wrote to the Secretary of State and to respondent informing them of its decision. The Secretary of State acknowledged receipt of the letter on December 28, 1976, and shortly thereafter sent appellant a form containing instructions on the manner of obtaining a voluntary dissolution of the corporation. Similar instructions were included in a letter which respondent wrote to appellant on February 10, 1977. Both of the above reply letters stated that a Certificate of Tax Clearance was a prerequisite to dissolution. On April 11, 1977 appellant requested such a certificate, which was issued by respondent on April 12, 1977. When this certificate and the Certificate of Winding Up and Dissolution were filed with the Secretary of State on April 18, 1977, the corporation was formally dissolved.

Every California corporation is subject to a minimum franchise tax in the amount of \$200.00 annually from the date of incorporation until the effective date of its dissolution. (Rev. & Tax. Code, §§ 23151, 23151.1, subd. (f), 23153.) The effective date of dissolution is the date on which a Certificate of **Winding Up and Dissolution** is filed in the Secretary of State's office. (Rev. & Tax. Code, § 23331.) This rule holds true even though the corporation may cease doing business prior to filing the certificate. (Cal. Admin. Code, tit. 18, reg. 23151-23154, subd. (b) .)

On several occasions this board has considered factual situations similar to the instant case and has consistently held that the explicit **definition** of the **effective date of dissolution** as set forth in section 23331 must be followed regardless of when a corporation ceases doing business. (Appeal of Izzi Pipeline, Inc.,

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Cal. St. Bd. of Equal., Nov. 13, 1973; Appeal of Truck-A-Way Produce Express, Inc., Cal. St. Bd. of Equal., Feb. 26, 1969; Appeal of Master Putty Manufacturing Co., Inc., Cal. St. Bd. of Equal., Aug. 30, 1967; Appeal of California Consolidated Water Co., Inc., Cal. St. Bd. of Equal., Aug. 30, 1967.) It is not the date of election to dissolve, but the date of actual filing of the Certificate of Winding Up and Dissolution which controls. (Appeal of Izzi Pipeline, Inc., supra; Appeal of Truck-A-Way Produce Express, Inc., supra; Appeal of U.S. Blockboard Corp., Cal. St. Bd. of Equal., July 7, 1967.) There can be no question that appellant herein was still in existence in the taxable year 1977, and is subject to the minimum franchise tax for the year in which appellant was dissolved. (Rev. & Tax. Code, §23332, subd. (b).)

Moreover, we see no merit in appellant's contention that it was unaware that it would be liable for the minimum franchise tax until it formally dissolved. Appellant states that it was led to believe that it could not obtain the tax clearance certificate which is a prerequisite to dissolution {Rev. & Tax. Code, §23334} until it had filed its final tax return. However, there is no language in either the Secretary of State's letter or in respondent's letter to **appellant which** can be said to be misleading in this regard. Further, appellant did not act on respondent's instructions for at least two months, when it finally requested a tax clearance certificate. This certificate was promptly issued by respondent, well within the statutory time limits for doing so. (Rev. & Tax. Code, § 23334.) It was not the responsibility of respondent nor of the Secretary of State to see that appellant filed a timely Certificate of Winding Up and Dissolution, and no evidence shows that either of these entities in any way prevented appellant from acting sooner. In any event, appellant's tax liability for 1977 had accrued before it received either of the letters discussed here; thus, appellant could not have relied to its detriment on the instructions therein. (See Appeal of Patrick J. and Brenda L. Harrington, Cal. St. Bd. of Equal., Jan. 11, 1978; see also Appeal of Arden K. and Dorothy S. Smith, Cal. St. Bd. of Equal., Oct. 7, 1974.)

For these reasons, respondent must be sustained in this matter.

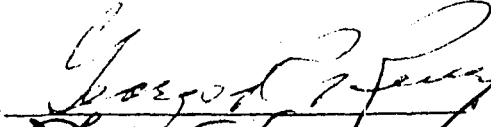
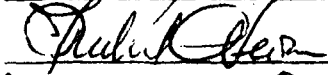
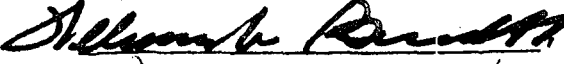
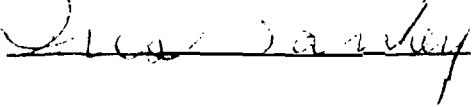
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O R D E R

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 Air Market Travel Corporation for refund of franchise tax in the amount of \$200.00 for the taxable year 1977, be and the same is hereby sustained.

Done at Sacramento, California, this 26th day of July, 1978, by the State Board of Equalization.


_____, Chairman

_____, Member

_____, Member

_____, Member
_____, Member