

Appeal of Vitmora Company

The issue presented is whether appellant, by failing to file a certificate of dissolution with the Secretary of State until after the beginning of its taxable year ended September 30, 1977, became liable for the minimum franchise tax for that year.

Appellant, a California corporation, ceased doing business on September 15, 1976 and filed a certificate of dissolution with the Secretary of State on February 11, 1977. As the result of communication between appellant's **representatives** and respondent, appellant paid a minimum tax of \$200 for its taxable year ended September 30, 1977. Appellant's representatives now claim entitlement to a refund of the \$200 on the ground that a corporation **should** not be required to pay tax for a year during which it was not actively engaged in business.

Section 23153 of the Revenue and Taxation Code imposes an annual \$200 minimum tax on every California **corporation not otherwise subject to the general franchise tax.**^{1/} The statute also provides that "[e]very such domestic corporation taxable under this section shall be subject to said tax from the date of incorporation until the effective date of dissolution as provided in Section 23331." Section 23331 provides that "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.**" Thus, "[e]very domestic corporation is subject to the annual minimum tax from the date of incorporation until the certificate of dissolution is filed with the Secretary of State, even though the corporation may cease doing business prior thereto." (Cal. Admin. Code, tit. 18, **reg. 23151-23154.**) (Emphasis added.)

Appellant's certificate of dissolution was not filed with the Secretary of State until February 11, 1977, well after the beginning of its taxable year ended September 30, 1977. Accordingly, pursuant to the express statutory provisions cited above, appellant is liable for the minimum tax for its taxable year ended September

^{1/} A California corporation is not subject to the general Franchise tax if it is not doing business within the limits of this state. (See Rev. & Tax. Code, §§ 23101, 23151.)

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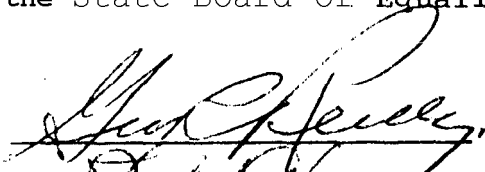
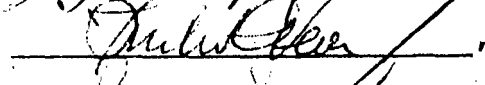
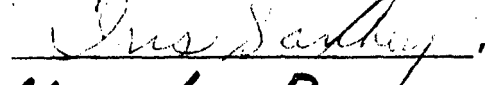

30, 1977, even though it conducted no business during that year. (Appeal of Truck-A-Way Produce Express, Inc., Cal. St. Bd. of Equal., Feb. 26, 1969; Appeal of Master Putty Manufacturing Co., Inc., Cal. St. Bd. of Equal., Aug. 30, 1967.)

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 Vitmora Company for refund of franchise tax in the amount of \$200.00 for the taxable year ended September 30, 1977, be and the same is hereby sustained.

Done at Sacramento, California, this **27th** day of September, 1978, **by the State Board of Equalization.**


_____, Chairman

_____, Member

_____, Member

_____, Member
_____, Member