



Appeal of Dimensions Unique, Inc.

The issue presented is whether, by not filing a Certificate of Winding Up and Dissolution until December 28, 1977, appellant became liable for the minimum franchise tax for the taxable year ended October 31, 1978.

On November 1, 1976, appellant filed its articles of incorporation with the office of the Secretary of State and paid the \$200.00 minimum franchise tax for its 'first income and taxable year ended October 31, 1977. On March 14, 1977, appellant also paid a \$200.00 estimated tax payment for the income year ended October 31, 1977, taxable year ended October 31, 1978. Because appellant's business of manufacturing and marketing **mirrors** was not profitable, appellant filed a Certificate of Election to Wind Up and Dissolve with the office of the Secretary of State on October 13, 1977, and proceeded to wind up the business. The certificate was **not certified** and returned to appellant **until** 'sometime in November. Thereafter, appellant's Certificate of Winding Up and Dissolution was filed with the office of the Secretary of State on December 28, 1977.

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. (e), 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, req. 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 Air Market Travel Corp., Cal. St. Bd. of Equal., July 26, 1978; 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 Air Market Travel Corp., 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 **subsequent to** the year ended October 31, 1977, and consequently **is** subject to the minimum franchise tax for the following year in which appellant was dissolved. (Rev. & Tax. Code, § 23332, subd. (b).)

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Appellant has raised certain equitable arguments, because of the circumstances of its particular case, in urging that no tax should be imposed for any period subsequent to the period in which it ceased doing business. In particular, appellant apparently contends that it is unfair to hold it liable for the minimum franchise tax for the second year in view of the delay in receiving the certified copy of the Certificate of Election to Wind Up and Dissolve from the Secretary of State's office.

We are unaware of any requirement precluding a corporate taxpayer from filing the Certificate of Winding Up and Dissolution notwithstanding lack of receipt of a certified **copy** of the earlier filed document. Here there is no evidence that appellant made any effort to file the actual Certificate of Winding Up and Dissolution by October 31, 1977.

Based upon the record before us there is no basis for making an adjustment and 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 DEC REED,** pursuant to section 26077 of the Revenue, and **Taxation Code,** that the action of the Franchise Tax Board in denying the claim of Dimensions Unique, Inc., for refund of franchise **tax** in the amount of \$200.00 for the taxable year ended October 31, 1978, be and the same is hereby sustained.

**March** Done at Sacramento, California, this 7th day of  
, 1979, by the State Board of **Equalization.**

Stallworth Burnett, Chairman  
Paul Dean, Member  
Wesley R. Rasmussen, Member  
George P. Seely, Member  
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