



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
THE POLETA MINING COMPANY)

For Appellant: Miller and Company
Certified Public Accountants

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 25667 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of The Poleta Mining Company against proposed assessments of additional franchise tax in the amount of \$175 for each of the income years 1973, 1974, and 1975.

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The question presented is whether appellant qualified for the **\$25** minimum franchise tax as an inactive gold mining corporation even though it was not incorporated in California until 1961.

Appellant was incorporated in California on March 9, 1961, and has been inactive since its creation. Consequently, it has not done any business within the limits of this state during its entire corporate existence. For the appeal years appellant timely filed its California franchise tax returns, claiming to be liable only for the minimum franchise tax at the reduced amount of \$25 applicable to certain domestic inactive gold mining corporations, pursuant to section 23153 of the Revenue and Taxation Code. Appellant paid that sum for each income year in question.

Respondent disagreed with appellant's conclusion that it qualified in accordance with the definition set forth in section 23153. Respondent's disagreement was based upon the consideration that appellant was incorporated after **1950**. Consequently, respondent issued the proposed assessments on the ground that the regular \$200 minimum franchise tax was owed by appellant for each of the income years.

Section **23153** provides, in pertinent part, as follows:

(a) Every corporation not otherwise taxed under this chapter and not expressly exempted by the provisions of this part or the Constitution of this state shall pay annually to the state a tax of one hundred dollars (**\$100**), except that the following corporations shall pay annually to the state a tax of twenty--five dollars (\$25):

* * *

(2) A corporation formed under the laws of this state whose principal business when formed was gold mining, which is inactive and has not done business **within** the limits of **the state** since 1950.

(3) A corporation formed under the laws of this state whose principal business when formed was quicksilver mining, which is inactive and has not done business within the limits of the state since 1971, or has been inactive for a period of 24 consecutive months or more.

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For the purpose of paragraphs (2) and (3) a corporation shall not be considered to have done business if it engages in other than mining.

(b) for income years beginning after December 31, 1971, the one hundred dollars (\$100) specified in subdivision (a) shall be two hundred dollars (\$209) instead of one hundred dollars (\$100). (Emphasis added.)

In essence, therefore, to qualify for the reduced minimum franchise tax as an inactive gold mining corporation, there are four conditions which must be satisfied. First, the corporation must have been incorporated in California. Second, the corporation's principal business when formed must have been gold mining. Third, the corporation must not have done business within California since 1950. Fourth, the corporation must be inactive.

A review of the legislative history of this statutory provision is helpful in determining whether appellant qualifies. The provision in question was initially enacted in 1961. (Stats. 1961, ch. 390, p. 1443.) At that time, as former subdivision (b) of section 23153, it defined a gold mining corporation entitled to the reduced \$25 minimum franchise tax, as follows:

(b) A corporation formed under the laws of the State for mining purposes which is inactive and not doing business within the limits of the State, and which, since 1950, has been inactive and has not done any business within the limits of the State. (Emphasis added.)

Moreover, the 1961 legislation also provided that, "For the purposes of this section [subdivision (b)] 'inactive' means inactive by reason of the devaluation of gold by presidential order in 1934 pursuant to the Joint Resolution of Congress of June 5, 1933 (48 Stat. 113 [1933].)"^{1/}

^{1/}That order, however, did not devalue gold. It actually increased its value from approximately \$21 per ounce to \$35 per ounce. (See Pres. Proc. No. 2072, 48 Stat. 1730 (Jan. 31, 1934); Department of Finance memorandum to Governor Edmund G. Brown, Sr., May 2, 1961.) Nevertheless, the aforementioned statute and the subsequent proclamation resulted in gold mining corporations being severely restricted in their operations.

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Because of the Congressional and Presidential action in 1933 and 1934 it is clear that the incentive to engage in gold mining was greatly reduced.

Thus, certain California gold mining corporations, impeded by the federal action, became inactive but remained in existence intending to operate in the future when it might again be profitable to engage in gold mining. It appears that the Legislature decided to reduce the minimum tax of such corporations as a means of providing them some relief. While this appears to have been the purpose of the state legislation, it is not clear why inactivity only since 1950 (a year substantially later than 1934) was needed to qualify such corporations for the reduced minimum tax.

In 1965, the Legislature redefined domestic gold mining corporations eligible for the reduced minimum franchise tax. (Stats. 1965, ch. 641, p. 1985.) This amendment redefined them as corporations whose principal business when formed was gold mining, but which are inactive and have done no business within the limits of the state since 1950, except incidental activities other than mining. Moreover, pursuant to this amendment, the specific definition of "inactive" included in the initial 1961 legislation was deleted. In 1973 the provision pertaining to inactive gold mining corporations was further amended to provide that corporations were not to be considered to have done business if they engaged in any business other than mining. (Stats. 1973, ch. 989, p. 1906.) This was accomplished by deleting the words "incidental activities" from the 1965 statutory language.

Respondent contends that the amended subdivision (a)(2) of section 23153 is also intended to apply only to domestic gold mining corporations which have been inactive continuously since 1950. After making such a contention, respondent then urges that it is erroneous to equate a corporation that has not come into legal existence with an inactive one, and that since appellant was not in existence until 1961 (when incorporated), it has not been inactive continuously since 1950. Consequently, respondent contends that appellant does not qualify for the reduced \$25 minimum franchise tax,

^{2/}Also enacted in chapter 989 was the provision pertaining to quicksilver mining corporations. (See Rev. & Tax. Code, § 23153, subd. Cal (3), supra.)

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We are inclined to agree with respondent's assertion that a corporation should not be regarded as **inactive** during a period prior to its coming into legal existence. The word "inactive" has been defined: (1) as marked by deliberate absence of activity or effort; (2) being unused or out of use; (3) lying idle; (4) idle, inert or **passive**; Or (5) as applying to **anyone** or anything not in **action**. (Webster's Third New Internat. Dict. (1971 ed.)) These definitions tend to indicate that actual creation is a prerequisite to the State of being "inactive." We agree, therefore, that it **would apparently** be erroneous to equate an **uncreated** corporation with an inactive one. Therefore, if, in resolving this appeal, the language of the original 1961 provision was applicable, appellant would apparently not qualify for the reduced **minimum** franchise tax on the ground that it had not been inactive since 1950.

In 1965, however, as already noted, the critical language of the pertinent provision was amended to its present wording, "whose principal business when formed **was** gold mining, which **is** inactive and has not done business within the limits **of the** state since 1950." (Emphasis added.) **Moreover**, at that time, as already indicated, the provision defining inactivity for purposes of the section as meaning inactivity caused by federal action in 1933 and 1934, was deleted.

We conclude, **therefore**, that as a consequence of the 1965 amendments, and, therefore, pursuant to the applicable language of subdivision (a) **(2) of section 23153**, appellant clearly qualified as an inactive domestic gold mining corporation entitled to the reduced minimum franchise tax. It is a domestic corporation whose intended principal business when formed in 1961 was gold mining. From 1950 through March of **1961** it did no business within the limits of the state because it was not in existence during that period, and from that latter date through December of 1975, although **in existence**, it did no business within the **limits of the** state.

Because of the 1965 amendments, gold **mining corporations** need only be presently inactive, i.e., **throughout the** specific income **years** in question. This is clearly **evidenced** by the change made from the past to **the present tense** in the language relating to the state of being "inactive"; moreover, the deletion of the **specific** reference to a past event as the required reason for being "inactive" is consistent with this **conclusion**. Consequently, appellant has satisfied all the conditions qualifying it for the reduced minimum **franchise tax**.

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We note here respondent's further allegation that the language of subdivision (a) **(3)**, with respect to quicksilver mining corporations, lends support to its interpretation that incorporation on or before 1950 is required. That section is identical! to the gold mining provision **except** for the nature of the mining, the year 1971 rather than **1950**, and the phrase "or, has been inactive for a period of 24 consecutive months or more." Respondent points out that in order to provide for quicksilver corporations becoming inactive after 1971 the phrase "or has been inactive for a period of 24 consecutive months or more" was inserted. If the clause "which is inactive and has not done business within the limits of the state since 1971," was intended to include corporations incorporated after as well as before 1971, which have become inactive after 1971, respondent asserts that there was no reason for the Legislature to have included the "24 month" phrase in subdivision (a) **(3)**.

Respondent urges that the Legislature must therefore have intended that the identical clause in subdivisions **(a) (2)** and **(a) (3)**, "which is inactive and has not done business within the limits of the state since 1950 **(1971)**," applies only to corporations incorporated in California before or during 1950 (1971) which have been inactive continuously from 1950 (1971) to the present. Respondent argues **that if the Legislature wanted to provide for inactive** gold mining corporations incorporated in California after 1950, it would have added a similar **"24 month"** phrase to the gold mining provisions.

We do not agree. The purpose of the additional "24 month" phrase was more likely intended to provide another means of eligibility for quicksilver mining corporations which do business within the limits of the state after 1971, and then become inactive.. We do not conceive of the phrase as being needed to confer eligibility for the reduced minimum tax upon corporations not in existence in 1971. As already indicated, such corporations would qualify pursuant to the statutory language even in the absence of the additional phrase.

For the foregoing reasons, we must reverse respondent's action.

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 25667 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest Of The Poleta Mining Company against proposed assessments of additional franchise tax in the amount of \$175 for each of the income years 1973, 1974, and 1975, be and the same is hereby reversed.

Done at Sacramento, California, this 16th day of August , 1979, by the State Board of Equalization.

William L. Bennett , Chairman

Paul J. [Signature] , Member

John Kelley , Member

_____, Member

_____, Member