

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
WESTLAND FOODS CORPORATION)

For Appellant: Richard D. Hildebrand
Vice President

For Respondent: **Jacqueline** W. Martins
Counsel

O P I N I O N

This appeal is made pursuant to section 26075, subdivision (a) of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of **Westland** Foods Corporation for refund of franchise tax in the amount of **\$1,358.99** for the income year ended October 31, 1977.

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The question presented is whether the provisions of Assembly Bill No. 1558 (AR **1558**), pertaining to the solar **energy** tax credit, are applicable in the computation of appellant's tax for its income year beginning November 1, 1976, and ended October 31, 1977.

Assembly Bill 1558 (Stats. 1977, ch. **1082**) was chaptered in September 1977 approximately one month before the end of appellant's income year in question. AB 1558 modified section 23601 of the Revenue and Taxation Code to increase the solar energy tax credit from ten percent of the cost of a solar energy system to 55 percent of the cost of a solar energy system.

Appellant originally filed a franchise tax return for the income year ended October 31, 1977, claiming a solar energy tax credit equal to ten percent of the cost of the solar energy system which it had installed sometime in August or September 1977. Subsequently, however, appellant filed an amended return claiming a solar energy tax credit at the 55 percent level. Respondent denied appellant's claim, and **appellant** thereafter timely filed this appeal.

For the reasons stated hereinafter, we conclude that the provisions of AB 1558 affect the computation of taxes for only those income years beginning after December 31, 1976, and therefore do not apply to the computation of appellant's taxes for its income year beginning November 1, 1976.

Section 23058 of the Revenue and Taxation Code states:

Unless otherwise specifically **provided** the provisions of any law effecting changes in the computation of taxes shall be applied only in the computation of taxes for income years beginning after December 31st of the year preceding enactment and the remaining provisions of any such law shall become effective on the date it becomes law.

Assembly Bill 1558 was enacted on September 26, 1977, when it was signed by the Governor and filed with the Secretary of State. (See In Re Thierry S., 19 Cal. 3d 727, 738-39 **139** Cal. Rptr. 708, 566 P.2d 6101 (1977);

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ops. Cal. **Legis.** Counsel, No. 15991 (Sept. 22, 1977)
Tax Credits: Solar Energy and Antipollution Devices
(**AB 1558**), p. 3.) Having been enacted in 1977, **AB 1558**
applies only to income years beginning after December 31,
1976, unless its terms include a specific provision to
the contrary. (Andrews v. Franchise Tax Board, 275 Cal.
App. 2d 653, 657 [80 Cal. Rptr. 4031 (1969)]; Farmers
Underwriters Assn. v. Franchise Tax Board, 242 Cal. App.
2d 589, 593 [51 Cal. Rptr. 686] (1966); Appeal of
Agricultural Exchange Corp., Cal. St. Bd. of Equal.,
Oct. 6, 1966; Appeal of Leman and Petronella Druyf, Cal.
St. Bd. of Equal., March 17, 1964.) However, such
specific provision must refer to a particular operative
date and not merely to an effective date. If only an
effective date is provided, the operative date is still
governed by the terms of section 23058. (Appeal of
Manufacturer's Bank, Cal. St. Bd. of Equal., June 4,
1970; see also Callahan v. City and County of San Francisco,
68 Cal. App. 2d 286 [156 P.2d 479] (1945).) Such is the
case with **AB 1558**, since the only date specified therein
is the effective date. Accordingly, **AB 1558**, pursuant to
section 23058, applies only to income years beginning
after December 31, 1976.

Given the application of **AB 1558** to income
years beginning after December 31, 1976, we note that
the installation of appellant's solar energy system
occurred during the income year beginning November 1,
1976. Appellant's solar energy system as installed in
August or September 1977 therefore did not qualify for
the tax credit allowed by **AB 1558**. The appropriate
credit available to appellant, assuming all other condi-
tions were met, was that which was in force for the
income year in which appellant installed its solar energy
system. Section 23601 of the Revenue and Taxation Code,
as it applied to income years beginning after December 31,
1975 (see Stats. 1976, ch. 168 and ch. **886**), provided for
a ten percent tax credit for the cost of qualified solar
energy devices. Appellant claimed this ten percent credit
on its initial return for the November 1, 1976 - October 31,
1977, income year. That ten percent tax credit reflects
the correct credit to which appellant was entitled. No
greater credit was applicable. Respondent therefore had
an adequate and proper basis for denying appellant's
claim for a refund of franchise tax in the amount of
\$1,358.99 for the income year beginning November 1, 1976,
and ended October 31, 1977.

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In protest against the above-noted application of Revenue and Taxation Code section 23058, appellant contends that respondent's instructions regarding the 1977 solar energy credit (the 55 percent credit) indicate that as long as its solar energy system is installed in calendar year 1977, it is eligible for the credit. The instructions state, in part, that "[t]o qualify for the credit, the solar energy system must be ... installed between January 1, 1977, and December 31, 1980" Such statement does seem capable of meaning that solar energy systems installed between January 1, 1977, and **December 31, 1980**, qualify for the 1977 solar energy credit, if otherwise eligible, particularly since the instructions do not distinguish between systems installed during an income year beginning after December 31, 1976, from those installed during an income year beginning before that date. However, even though there may be some merit to appellant's contention, we must still limit the application of the 1977 solar energy credit to income years beginning after December 31, 1976. Our **reason** for 'doing so is based on the established principle that an instruction cannot change that which is prescribed by **statute**. (Appeal of Michael M. and Olivia D. MaKieve, Cal. St. Bd. of Equal., Nov. 19, 1975; see **also** Appeal of M. Yamachi, Cal. St. Bd. of Equal., June 28, 1977; Appeal of Lester A. and Catherine B. Ludlow, Cal. St. Bd. of Equal., March 18, 1975.) **In the instant case**, the applicability of **AB 1558** is controlled by section 23058 of the Revenue and Taxation Code, and the existence of an instruction arguably at odds therewith does not change that statute's impact.

Faulty instructions have nonetheless, provided an adequate basis for the application of the doctrine of equitable estoppel in cases where a taxpayer has relied on such instructions to his detriment. (Appeal of Kenneth J. and Freda A. Roth, Cal. St. Bd. of Equal., Sept. 27, 1978.) **In the case before us**, however, appellant did not rely upon respondent's allegedly erroneous instructions in deciding to install its solar energy system since the instructions were not published until December 1977, after the solar energy system was installed. Accordingly, equitable estoppel is inapplicable.

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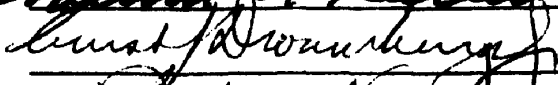

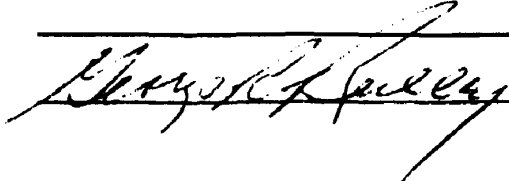
For the foregoing reasons, it is found that appellant is not entitled to the refund of franchise tax which it claimed in this case. Respondent's action in denying such claim is therefore sustained.

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 **Westland** Foods Corporation for refund of franchise tax in the amount of **\$1,358.99** for the income year ended October 31, 1977, be and the same is hereby sustained.

Done at Sacramento, California, this 25 day of September , 1979, by the State Board **of Equalization.**

 _____, Chairman
 _____, Member
 _____, Member
_____, Member
 _____, Member