

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)	
)	
Alpha Therapeutic Corporation)	No. 97R-0404
)	
_____)	

Representing the Parties:

For Appellant: Edward A. Colton, General Counsel

For Respondent: Robert W. Dunn, Counsel

Counsel for Board of Equalization: John S. Butterfield, Tax Counsel

OPINION

This appeal is made pursuant to section 19324, subdivision (a), of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of Alpha Therapeutic Corporation for refund of franchise tax in the amounts of \$109,000, \$476,000, \$317,142 and \$48,785 for the income years ended September 30, 1990, September 30, 1991, September 30, 1992, and September 30, 1993, respectively.

Appellant is a California corporation which is engaged in the business of processing and selling human source plasma and plasma derivative therapeutic products (plasma). In the claims for refund before this Board, appellant contends that the income derived

from such sales should not be included in the measure of its franchise tax, and that its liability should be limited to the minimum franchise tax in effect for the years in issue.

Revenue and Taxation Code section 23151 provides that corporations doing business in this state shall pay a franchise tax measured by its net income. In this case, it is stipulated that appellant's net income is solely derived from the sale of plasma and plasma derivatives.

Appellant contends that its net income should not be included in the measure of the franchise tax under the provisions of Revenue and Taxation Code section 33, which section provides:

“Human whole blood, plasma, blood products, and blood derivatives, or any human body parts held in a bank for medical purposes, shall be exempt from taxation for any purpose.”

The question which must be resolved by this Board is this: Is a tax on the exercise of appellant's corporate franchise in this state, which tax is measured by appellant's net income, equivalent to a tax on plasma and plasma products when appellant's net income is derived solely from the sale of such products? We conclude that it is not.

Simply put, the corporate franchise tax is not imposed on property used, sold or owned by a corporation doing business in this state. The franchise tax is not imposed on the proceeds of the sale of products or services, or the income derived from such sales, either. The tax is imposed on the privilege of doing business in this state in corporate form. (Rev.& Tax. Code, § 23151.) As such, it is treated in its application to the law as a license or excise tax. (American States Water Service Co. v. Johnson (1939) 31 Cal.App.2d 606, 612.) A franchise tax may be measured by net income, even though part of the income is exempt from property or income tax.¹ (Flint v. Stone Tracy Co. (1911) 220 U.S. 107.) We find, therefore, that the franchise tax in this case was not imposed on plasma, or on the income derived from the sale of plasma, and is not prohibited by the operation of Revenue and Taxation Code section 33.

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¹We express no opinion as to whether income derived from the sale of blood is exempt from the corporate income tax.

ORDER

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 19333 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Alpha Therapeutic Corporation for refund of franchise tax in the amounts of \$109,000, \$476,000, \$317,142 and \$48,785 for the income years ended September 30, 1990, September 30, 1991, September 30, 1992, and September 30, 1993, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 30th day of July, 1998, by the State Board of Equalization, with Board Members Mr. Andal, Mr. Dronenburg, Mr. Klehs, Ms. Mandel* and Mr. Chiang** present.

_____, Chairman

Johan Klehs _____, Member

Ernest J. Dronenburg, Jr. _____, Member

Marcy Jo Mandel* _____, Member

John Chiang** _____, Member

*For Kathleen Connell, per Government Code section 7.9.

**Acting Member, 4th District.