

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
EDWIN M. ROSENDAHL,)
A Professional Law Corporation)

Appearances:

For Appellant: Edwin M. Rosendahl
Attorney at Law

For Respondent: Terry Collins
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 Edwin M. Rosendahl; a professional law corporation, for refund of franchise tax, penalty, and interest in the total amount of \$294 for the income year ended April 30, 1980.

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The issue presented by this appeal is whether appellant is required to pay the minimum franchise tax for the income year ended April 30, 1980.

Appellant, a professional law corporation, was incorporated on March 14, 1980, and chose a fiscal year of May 1 to April 30. It commenced doing business on May 1, 1980, the date it received its certificate of registration from the State Bar of California. Pursuant to section 13404 of the Corporations Code, a professional law corporation is prohibited from doing any business or rendering any legal services until it receives a certificate of registration from the State Bar of California. Therefore, appellant was not entitled to do any business prior to May 1, 1980.

Appellant did not file a California franchise tax return for the income year ended April 30, 1980. Respondent determined that appellant was required to file a return for that income year and requested that appellant do so. When appellant failed to file the return, respondent issued a proposed assessment in the amount of \$200, the minimum franchise tax specified in section 23153 of the Revenue and Taxation Code. It also imposed a 25 percent penalty for failure to file a timely return. Appellant paid the proposed assessment and filed a claim for refund of the amount paid. The claim was denied, leading to this appeal. Appellant has raised no issue regarding the imposition of the penalty. We therefore assume that it concedes that if respondent's position is upheld, the imposition of the penalty was proper.

Section 23153 of the Revenue and Taxation Code imposes a minimum tax upon every corporation not otherwise taxed under the Bank and Corporation Franchise Tax Law and not specifically exempted from tax. That section provides that "[e]very such domestic corporation taxable under this section shall be subject to the said tax from the date of incorporation until the effective date of dissolution as provided in Section 23331."

Appellant contends that it is not obligated to pay the minimum tax for its first income year (March 14, 1980, to April 30, 1980) because it did not do any business during that period. The issue raised by appellant has been decided by this board in a number of appeals. (See, e.g., Appeal of Oxford Liquor, Inc., Cal. St. Bd. of Equal., March 7, 1979; Appeal of American Empire Mutual Fund, Inc., Cal. St. Bd. of Equal., May 11, 1972.)

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In those appeals, we held that a corporation which does no business during a particular income year is subject to the \$200 minimum tax imposed by section 23153, regardless of how short the income year may be. Appellant argues that those appeals are distinguishable because, in this appeal, appellant did not voluntarily refrain from doing any business. Rather, it was prohibited from doing any business until May 1, 1980, when it obtained its certificate of registration. This difference is without significance. As we **explained** in the Appeal of American Empire Mutual Fund, Inc., supra, "[t]he short answer is that the very act of incorporation invokes the operation of section 23153, regardless of whether extrinsic rules of law may impose sanctions on the immediate doing of business by the corporation." Since appellant was incorporated during its income year ended April 30, 1980, it must pay the minimum tax for that year, even though it did no business during that time.

Appellant argues that, in the case of the professional law corporation, this result is so unfair that it could not have been the intent of the California Legislature in enacting section 23153 of the Revenue and Taxation Code. This conclusion is based on the fact that a professional law corporation has to be incorporated before it can apply for its certificate of registration. We cannot agree. The language of section 231-53 is clear, and appellant has presented no support for the proposition that a professional law corporation awaiting its certificate of registration is exempt from operation of that section. Furthermore, any hardship suffered by appellant resulted from its founder's choice of the date of the business' incorporation and of the business' fiscal year and is not inherent in the interaction of the Corporations Code and the Revenue and Taxation Code. We therefore conclude that respondent correctly determined appellant to be obligated to pay the minimum tax for the income year ended April 30, 1980.

For the above reasons, respondent's action must be sustained.

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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 DECREED, pursuant to section 26077 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Edwin M. Rosendahl, a professional law corporation, for refund of franchise tax, penalty, and interest in the total amount of \$294 for the income year ended April 30, 1980, be and the same is hereby sustained.

Done at Sacramento, California, this 28th day of February , 1984, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Dronenburg, Mr. Collis, Mr. Bennett and Mr. Harvey present.

<u>Richard Nevins</u>	, Chairman
<u>Ernest J. Dronenburg, Jr.</u>	, Member
<u>Conway H. Collis</u>	, Member
<u>William PI. Bennett</u>	, Member
<u>Walter Harvey*</u>	, Member

*For Kenneth Cory, per Government Code section 7.9