



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
MASTER PUTTY MANUFACTURING CO., INC.)

For Appellant: Eugene P. Trojan

For Respondent: Crawford H. Thomas
Chief Counsel

Gary Paul Kane
Tax Counsel

O P I N I O N

This appeal is made pursuant to section 26077 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the claim of Master Putty Manufacturing Co., Inc. for refund of franchise tax in the amount of \$100 for the taxable year ended June 30, 1967.

The primary question presented is whether appellant, by failing to file a certificate of winding up and dissolution with the Secretary of State until after the beginning of the taxable year ended June 30, 1967, became liable for the minimum franchise tax for that year,

Appellant, a California corporation, ceased business operations on March 31, 1966. On June 15, 1966 appellant filed a franchise tax return with a statement of assets and liabilities showing no assets or liabilities as of March 31, 1966, which, according to appellant, indicated to respondent Franchise Tax Board that all liabilities were satisfied and that the assets had been distributed to its sole stockholder, Appellant, which did not have any taxable net income for the income year ended June 30, 1966, had previously paid a \$103 minimum tax for the taxable year ended June 30, 1967, as prescribed by section 23153 of the Revenue and Taxation Code. On June 15, 1966 respondent also received appellant's request for a tax clearance certificate,

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Respondent issued the certificate on July 13, 1966, but it was not received by appellant until July 15, 1966. Inasmuch as the tax clearance certificate had an expiration date of July 15, 1966, the Secretary of State did not accept the certificate of winding up and dissolution when first presented for filing after July 15, 1966. Ultimately, a second tax clearance certificate was requested from respondent and issued. A certificate of winding up and dissolution, was thereafter duly filed with the Secretary of State on September 2, 1966,

Respondent disallowed the claim for refund on the ground that appellant's corporate existence had continued into the taxable year ended June 30, 1967, and appellant was thereby subject to the minimum tax for that year.

Under section 23332 of the Revenue and Taxation Code, the minimum tax applies to the taxable year in which the corporation dissolves. The "effective date of dissolution of a corporation" is the date on which the certificate of winding up and dissolution is filed in the office of the Secretary of State. (Rev. & Tax. Code, § 23331.) Before a certificate of winding up and dissolution may be filed, however, a tax clearance certificate issued by respondent must be filed with the Secretary of State. (Rev. & Tax. Code, § 23334 and Corp. Code, § 5201.) Pursuant to section 23334, respondent must act upon a request for tax clearance within 30 days after receiving such a request.

In determining the date of dissolution, a period of half a month is disregarded (Cal. Admin. Code, tit. 18, reg. 23331-23334, subd. (b)) so an effective dissolution occurring on or before July 15, 1966 would have been treated as if it had occurred on June 30, 1966, and therefore during a prior taxable year. However, inasmuch as the certificate was not filed with the Secretary of State until September 2, 1966, there is no escape from the conclusion that the effective date of appellant's dissolution occurred during the taxable year ended June 30, 1967. Accordingly, pursuant to the express statutory provisions, appellant is liable for the minimum franchise tax for that year,

Appellant attempts to make a case in the nature of estoppel on the basis that respondent should have furnished a tax clearance certificate sooner, claiming that respondent had on hand by June 15, 1966, sufficient information to issue a certificate almost immediately. Without considering the question whether under a proper set of facts estoppel could apply in a situation similar to this, it cannot be held that

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respondent is estopped where respondent issued the certificate within the 30-day period prescribed in section 23334 and where appellant could have requested the certificate at an earlier date and thereupon received tax clearance within ample time to enable appellant to dissolve on or before July 15, 1966.

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 on the claim of Master Putty Manufacturing Co., Inc., for refund of franchise tax in the amount of \$100 for the taxable year ended June 30, 1967, be and the same is hereby sustained.

Done at Sacramento California, this 30th day of August, 1967, by the State Board of Equalization.

Paul R. Leake, Chairman
John W. Lynch, Member
Richard Lee, Member
_____, Member
_____, Member

ATTEST: [Signature], Secretary