



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
MARKET LESSORS, INC.)

For Appellant: Laurence G. Kraus
President of Appellant

For Respondent: Crawford H. Thomas
Chief Counsel

A. Ben Jacobson
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 Market Lessors, Inc., against proposed assessments of additional franchise tax in the amounts of \$611.03, \$611.03 and \$825.85 for the taxable years ended May 31, 1962, 1963 and 1965, respectively.

Appellant's franchise taxes for the taxable years ended May 31, 1962 and 1963 were measured by the income year ended May 31, 1962, under the commencing corporation provisions of the Bank and Corporation Tax Law. The Internal Revenue Service audited appellant's federal income tax returns for the years ended May 31, 1962 and 1963, and made substantial changes in the reported income and deductions of the former year. The Service's final determination of these changes was issued on September 24, 1965, and resulted in a deficiency assessment.

Appellant filed a California franchise tax return on October 15, 1965. One of the questions on the return stated:

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I. If the Federal Government has determined your income tax liability to be different from that reported for any year (other than adjustments which have been sent to the State) state the year or years involved and whether the change in liability was made as a result of a Federal audit or an amended return. (See Instruction 19)

Appellant answered "Audit - 1962 & 1963." Instruction 19, referred to by the above question, is entitled "Supplementary Data or Amended Return" and states the essence of section 25432 of the Revenue and Taxation Code, infra. The instruction then concludes "Any change or correction reported should be mailed separate from the annual return of the taxpayer."

Respondent wrote to appellant on February 23, 1966, asking whether a federal examination had been made, and if so, requesting a copy of the report. On March 24, 1966, appellant sent two schedules to the Franchise Tax Board. Subsequently respondent and Mr. Kraus, president of appellant, discussed the case, and on June 29, 1966, Mr. Kraus submitted copies of the federal examiner's report. Respondent determined that the federal changes were relevant to appellant's California franchise tax liability for the taxable years ended May 31, 1962 and 1963, and issued notices of proposed deficiency assessment on October 21, 1966. The sole issue of this case is whether these notices were issued within the applicable statute of limitations.

Appellant contends that its answer to question I, above, was adequate compliance with sections 25432 and 25674 of the Revenue and Taxation Code and consequently the statute of limitations ran on August 15, 1966, approximately two months before respondent's proposed assessments were issued. During the years in question section 25432 provided:

If the amount of net income for any year of any taxpayer as returned to the United States Treasury Department is changed or corrected by the Commissioner of Internal Revenue or other officer of the United States or other competent authority, or where a renegotiation of a contract or subcontract with the United States results in a change in net income, such taxpayer shall report such change or corrected net income? or the results of such renegotiation, within 90 days after the final determination of such change or correction or renegotiation, or as required by the Franchise Tax Board, and

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shall concede the accuracy of such determination or state wherein it is erroneous. Any tax-payer filing an amended return with such department shall also file within 90 days thereafter an amended return with the Franchise Tax Board which shall contain such information as it shall require.

Section 25674 states:

If a taxpayer is required to report a change or correction by the Commissioner of Internal Revenue or other officer of the United States or other competent authority or to file an amended return as required by Section 25432 and does report such change or files such return, a notice of proposed deficiency assessment resulting from such adjustments may be mailed to the taxpayer within six months from the date such notice or amended return is filed with the Franchise Tax Board by the taxpayer, or within the period provided in Sections 25663 and 25663c, whichever period expires the later.

Section 25663 provides for a four year statute of limitations commencing on the last day prescribed by law for the filing of the return.

Respondent contends that appellant's answer to question I, above, was not adequate compliance with the above quoted sections and therefore section 25673 applies. This section states:

If a taxpayer shall fail to report a change or correction by the Commissioner of Internal Revenue or other officer of the United States or other competent authority or shall fail to file an amended return as required by Section 25432, notice of proposed deficiency assessment resulting from such adjustment may be mailed to the taxpayer within four years after said change, correction or amended return is reported to or filed with the Federal Government.

We do not think that appellant's answer to question I on its October 15, 1965 return was the compliance required

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by sections 25432 and 25674. The former section uses the language "such taxpayer shall report such change or corrected net income, or the results of such renegotiation." The plain meaning of this language is that a taxpayer must report the substance of the change, correction, or renegotiation, not merely the fact that a change was made. Similarly, when a taxpayer files an amended return with the federal government he must also file an amended return with the Franchise Tax Board. It is not sufficient to merely notify the board that an amended federal return was filed on a certain date.

Sections 25432 and 25674 are designed to permit the Franchise Tax Board to obtain the benefit of the investigations and final determinations of the federal authorities in regard to the taxpayer's federal return. (See Appeal of Mary R. Encell, Cal. St. Bd. of Equal., Apr. 21, 1959; Appeals of Philip Jordan, et al., Cal. St. Bd. of Equal., Nov. 7, 1958.)

Appellant contends that the last sentence of Instruction 19, which provides that any change or correction reported should be mailed separate from the annual return of the taxpayer, was misleading in that it implies that an answer to question I in the annual return is adequate compliance with sections 25432 and 25674. However, Instruction 19 is entitled "Supplementary Data or Amended Return," which clearly implies that the information asked for in question I is not adequate. The obvious meaning of the sentence is that such supplementary data should be mailed separately, and not enclosed with the taxpayer's return.'

We must conclude that the section 25673 statute of limitations applies and consequently respondent's notices of proposed deficiency assessment were not barred. Appellant has not presented any arguments concerning the taxable year ended May 31, 1965, and therefore respondent's determination with regard to this year must also be upheld.

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,

