



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
CALIFORNIA ASSOCIATION OF SCHOOL)
ADMINISTRATORS)

For Appellant: Edward P. Clark
Certified Public Accountant

For Respondent: Crawford H. Thomas,
Chief Counsel

John D. Schell
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 in denying the claims of California Association of School Administrators for refund of franchise tax in the amounts of \$69.54, \$143.44, \$211.50 and \$234.07 for the income years 1958, 1959, 1960 and 1962, respectively.

The sole question for decision is whether the above mentioned claims for refund were barred by the statute of limitations.

Appellant was incorporated under California law on October 16, 1952, and has its main office in Pasadena, California. It is exempt from tax under sections 23701 et seq. of the Revenue and Taxation Code.

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On October 19, 1965, the Internal Revenue Service determined that appellant had received taxable unrelated business income from exhibits at trade fairs during 1958 and all subsequent years. By letter dated February 28, 1966, respondent notified appellant that since the state and federal laws in this area were identical, it would be required to file unrelated **business** income tax returns for state tax purposes for 1958 and all subsequent years. On July 27, 1966, appellant **filed** the requested -returns, reporting income-on-k calendar year basis for the years 1958-1964. No taxes were shown to be due for 1961 or 1964, but the taxes reportedly due for the **remaining years** were, paid.

On **April** 14, 1967, the Internal Revenue Service issued Technical Information Release No. 899, which indicated that it would **soon** issue a ruling withdrawing its previous contention **that** income from trade shows was **taxable** as unrelated business income to an otherwise exempt trade association. Technical Information Release No. 913, dated June 23, 1967, **set** forth the text of the ruling containing this change of position, and announced it would be issued on July **10**, 1967. (See Rev. Rul. 67-219, 1967-2 Cum. Bull. 210.)

On August 2, 1967, the Internal Revenue Service reversed its earlier determination with respect **to the** taxability of appellant's income from exhibits at trade fairs in 1958 and subsequent years. Appellant filed claims for refund with respondent for all years for which state taxes had been paid. Respondent allowed the claims for 1963 and later income years, but denied those **for the earlier years on the ground that -they were barred by the sta-tute of limitations. Respondent's denial of those claims gave rise** to this appeal,

During the years **in question** section **23771** of the Revenue and Taxation Code provided:

Every organization, otherwise exempt under Article 1 of this chapter, **but having** income of the character described in Article 2 [unrelated business income], shall file a return, verified by an executive officer under penalties

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of perjury in the form prescribed by the Franchise Tax Board, within two months and 15 days of the close of the income year, reporting its income 'from such activities and shall pay a tax of 5.5 percent [4 percent for income years ending prior to December 31, 1958] on its Article 2 net income as **defined** in Section **23731b**.

Under this provision, unrelated business income returns were due from appellant on or before March 15 following the close of each of appellant's calendar **income** years.

Respondent's regulations provide, **in pertinent part,**

Since the taxes imposed by Article 2 of Chapter 4 [the unrelated business income tax on exempt corporations] are taxes imposed by Sections 23151 [the franchise tax] and 23501 [the corporation income tax] of the Bank and Corporation Tax Law, all provisions of law and of these regulations imposed by Sections 23151 and 23501 are applicable to the assessment and collection of the taxes imposed by Article 2 of Chapter 4.... Organizations subject to the tax imposed by Section 23731 [the unrelated business income tax] are subject to the same provisions, including penalties, as are provided in the case of the tax of other corporations. (Cal. Admin. Code, tit. 18, reg. **23731-23731b(3)**, subd.

(a.)

Under this regulation the statute of limitations **governing** claims for refund of franchise tax **and corporation** income tax is also controlling with respect to claims for refund of the tax on unrelated business income.

Insofar as is relevant here, section 26073 provides:

No...refund shall be allowed'or made after four years from the last day prescribed for filing the return or **after one** year from the

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date of overpayment, whichever period **expires** the later, unless before the expiration **of** such period a claim **therefor is filed** by the taxpayer,...

Applying this section to the facts of the instant case, the latest **date on which a claim for** refund could have been filed for any of the years on **appeal** was four years after March 15, 1963, the due date of the latest return in question, or one year after July 27, **1966**, the date of overpayment, whichever was later. Under the **unambiguous** language of this provision July 27, **1967**, marked the end of the maximum period allowed for **filing refund** claims for any of the years on appeal. Appellant's **claims** were filed on September **16**, 1968.

Appellant contends that a **4-year** statute of **limitations on** its claims for refund commenced running on **July 27, 1966**, the date on which it filed its unrelated business income tax-returns and paid the tax shown to be due. **In support of that contention** appellant cites respondent's Legal Ruling No. 154 (2 **CCH Cal. Tax Cas. Par.201-108**), dated December 5, 1958. In our opinion **that** ruling is of no avail to appellant because **it** dealt with the statute of limitations governing respondent's **authority to** request tax returns and to demand payment of the tax. It was not at all concerned with **the time limit for filing** claims **for refund of taxes.**

In view of the controlling provisions of the law and **the regulations**, we must conclude that respondent **properly** determined that the claims for refund involved in the instant appeal were barred by the statute of limitations.

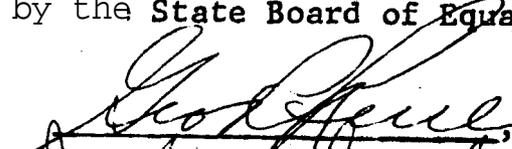
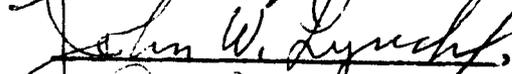
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Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

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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 claims of California Association of School Administrators for refund of franchise tax in the amounts of \$69.54, \$143.44, \$211.50 and \$234.07 for the income years 1'958, 1959, 1960 and 1962, respectively, be and the same is hereby sustained.

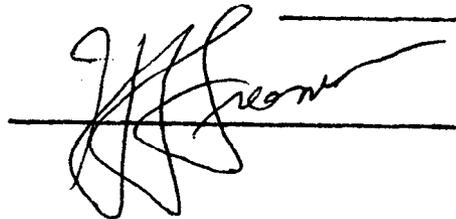
Done at Sacramento, California, this 6th day of November, 1970, by the **State Board of Equalization.**


_____, Chairman

_____, Member

_____, Member

_____, Member
_____, Member

ATTEST:


_____, Secretary

