



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
MAMMOTH ACADEMY)

For Appellant: Ray J. Thompson
For Respondent: Crawford H. Thomas
Chief Counsel
Richard A. Watson
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 claim of Mammoth Academy for refund of franchise tax in the amount of \$100 for the income year 1968.

The issue in this case is whether Mammoth Academy was liable for payment of the \$100 minimum franchise tax in 1968.

Mammoth Academy, hereinafter referred to as appellant, is a private grade school located in Mammoth Lake, California, which began operation in 1966 as the sole proprietorship of Mr. Ray J. Thompson. On March 7, 1968, Mr. Thompson caused appellant's articles of incorporation to be filed in the Office of the Secretary of State. Appellant prepaid the \$100 minimum franchise tax for 1968 in accordance with section 23221 of the Revenue and Taxation Code. It then applied for exemption

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from tax as an educational corporation and, on that ground, claimed a refund of the minimum franchise tax payment. Meanwhile, Mr. Thompson continued to treat all of appellant's income as his own personal income; this was evidenced by a tax return filed by Mr. Thompson for the year in question and by a letter dated February 26, 1970, to the respondent.

Respondent notified appellant on November 1, 1968, that its application for tax exemption could not be processed further until it revised its articles of incorporation to limit distribution of assets, in the event of dissolution, to tax exempt organizations, and furnished various financial statements. Appellant never responded to this communication or to a follow-up letter dated July 1, 1969. Consequently, on January 17, 1970, respondent disallowed appellant's application for exempt status and denied the related claim for refund. The denial gave rise to this appeal.

Appellant apparently contends that it is not liable for the minimum franchise tax because it was never incorporated. However, appellant's articles of incorporation were filed with the Secretary of State on March 7, 1968, and section 308 of the Corporations Code provides:

If the articles conform to law, the Secretary of State shall file them in his office and shall endorse the date of filing thereon. The corporate existence begins upon the filing of the articles and continues perpetually, unless otherwise expressly provided by law.

Appellant was therefore incorporated on March 7, 1968, (Brodsky v. Seaboard Realty Co., 206 Cal. App. 2d 504 [24 Cal. Rptr. 61]; Flash Cleaners, Inc. v. Columbia Appliance Corp., 156 Cal. App. 2d 455 [319 P.2d 4-54-j; I. W. Williams Co. v. Leong Sue Ah Quin, 44 Cal. App. 296 [186 F. 401])). Once incorporated, appellant became liable for payment of the minimum franchise tax, unless expressly exempted by the California Constitution or the Bank and Corporation Tax Law. (Rev. & Tax. Code, §23153.)

In the instant case, all of appellant's net earnings inured to the benefit of Mr. Ray J. Thompson. Section 23701d of the Revenue and Taxation Code provides that in order to qualify for the educational exemption, no part of the net earnings may inure to the benefit of any individual, assets must be irrevocably dedicated to exempt purposes, and the

