

Appeal of Ted M. Walsh and Associates, Inc.

Appellant was incorporated in California on October 20, 1954, and commenced doing business in this **state** on January 1, 1955. Appellant selected March 31 **as** its- fiscal year end, and filed its initial California franchise tax return for the taxable year ended March 31, 19'55. Thus, appellant's first taxable year constituted a period of less than 12 months.

Appellant's second taxable year ended March 31, 1956, and represented the first taxable period during which appellant conducted business in California for a full 12 months. Upon filing its return for the second taxable year, appellant paid a tax computed on the basis of its net income received during that year. In addition, appellant was- required to prepay the tax for its third taxable year computed on the basis of its net income received during its second taxable year. (See Rev. & **Tax. Code, § 23222.**) Thereafter, appellant was required to prepay the tax for each succeeding taxable year on the basis- of its net income received during the respective preceding taxable year. (See Rev. & Tax. Code, **§ 23151.**)

On June 14, 1972, appellant filed a return for its income year ended March 31, 1972, wherein it reported a net **loss** of \$786.15. Accordingly, appellant paid the minimum tax required for the taxable year ended March 31, . 1973. (See Rev. & Tax. Code, **§§ 25561, 25563.**) However, appellant formally dissolved on February 5, 1973. **In its** final California franchise tax return, filed, on April 15, 1973 for the period from April 1, 1972 to February 5, 1973, appellant claimed a credit for the amount of tax that it had paid for its taxable year ended March 31, 1956, pursuant to subdivision **(a)** of section 23201 of the Revenue and Taxation Code.

Section 23201, enacted October 29, 1971, provides, in pertinent part:

(a) In the case of a taxpayer whose tax for the first taxable year was computed under Section **23222...**there shall be allowed as a credit against the tax for the taxable year of cessation of doing business, dissolution or withdrawal, an amount equal to the tax paid for the first taxable year which constituted a full 12 months of doing business in this state.

Appeal of Ted M. Walsh and Associates, Inc.

(b) In the case of a taxpayer whose tax for the first taxable year was computed under **Section 23151.1**...there shall be allowed as a credit against the tax for the taxable year of cessation of doing business, dissolution or withdrawal, an amount equal to the minimum tax in effect for the first taxable year.

As previously indicated, appellant's first taxable year, ended March 31, 1955, constituted a period of less than 12 months. Appellant's tax for that year was computed under section 23222 of the Revenue and Taxation Code. The first taxable year during which appellant conducted business in this state for a full 12 months was its second taxable year, ended March 31, 1956, and appellant paid a tax for that year in the amount of \$2,372. Thus, it would appear that appellant is entitled to claim a credit in the amount of \$2,372 against the tax for the taxable year of its dissolution, pursuant to the express provisions of subdivision (a) of section 23201.

Respondent disallowed the credit on the basis of its belief that section 23201 is inapplicable with **respect** to taxable years beginning prior to January 1, 1973. Respondent asserts that the tax for appellant's taxable year of dissolution should have been computed pursuant to subdivision (a) of section 23332 of the Revenue and Taxation Code: it is apparently respondent's position that the computation of the tax for a corporation's final taxable year under subdivision (a) of section 23332 precludes use of the credit provided by subdivision (a) of section 23201.

Thus, the narrow question presented for our resolution is whether the credit described in subdivision (a) of section 23201 is available to appellant for purposes of computing the tax for its taxable year ended February 5, 1973.

Prior to its amendment in 1972, section 23332 provided, in pertinent part:

(a) [A]ny taxpayer which is dissolved or withdraws from the state during any taxable year shall pay a tax only for the months of the taxable year which precede the effective

Appeal of Ted M. Walsh and Associates, Inc.

date of such dissolution or withdrawal....
In any event, each corporation shall pay a tax not subject to offset for such period in an amount equal to the minimum tax prescribed by Section 23153.

(b) The provisions of subdivision (a) shall be applied only in the computation and payment of the taxes for taxable years beginning before January 1, 1973. With respect to taxable years beginning after December 31, 1972, the tax for the taxable year in which the taxpayer ceases doing business, dissolves or withdraws shall be determined under subdivision (c) of Section 23151.1,...

Subdivision (h) was added to section 23332 as part of a comprehensive legislative plan designed to change the method of computing the tax liability of commencing and dissolving corporations (See Stats 1971, ch. 1304, p. 2565; Stats. 1971, 1st Ex. Sess., ch. 1, p. 5054.) Pursuant to the above cited language of section 23332, a corporation that dissolved in a taxable year beginning prior to January 1, 1973 was required to compute its tax for that year in accordance with the provisions of subdivision (a) of section 23332, while a corporation that dissolved in, a taxable year beginning after December 31, 1972 was required to compute its final year's tax under subdivision (c) of section 23151.1.

Subdivision (c) of section 23151.1, prior to its amendment in 1972, provided:

(c) With respect to taxable years beginning after December 31, 1972, a tax for the taxable year during which the corporation ceases doing business, dissolves or withdraws shall be:
(1) According to or measured by its net income, to be computed at the rate prescribed in Section 23151, upon the basis of its income for the next preceding income year, plus (2) According to or measured by its net income, to be computed at the rate prescribed in Section 23151, upon the basis of its income of the taxable year during which the corporation ceases doing business, dissolves or withdraws.

Appeal of Ted M. Walsh and Associates, Inc.

As indicated above, a corporation which is required to compute its final year's tax under subdivision (a) of section 23332 generally will pay a tax for that year no greater than a proportion of the tax for the taxable year immediately preceding the year of dissolution or withdrawal, such proportion being computed on the basis of the number of months which precede the effective date of dissolution or withdrawal. On the **other hand**, a corporation which is required to compute its final year's tax under subdivision (c) of section 23151.1 must pay a tax for that year equal to the tax computed upon the basis of its income for the next preceding income year plus the tax computed upon the basis **of** its income for the taxable year of dissolution. In effect, the corporation which is required to compute its final year's tax under subdivision (c) of section 23151.1 must **pay a** "double" tax for that year.

Respondent contends, and we agree, that the credit provided by section 23201 is not available to a taxpayer which computes its final year's tax under subdivision (a) of section 23332. It seems clear that the credit was provided to counteract or diminish the "double" tax imposed by subdivision (c) of section 23151.1. Therefore, our task with respect to the instant appeal is simply to determine whether appellant's final year's tax was computable under subdivision (a) of section 23332 or whether it was computable under subdivision (c) of section 23151.1. In making that determination we must consult subdivision (b) of section 23332, since it is that provision which governs the applicability of the subdivisions in question.

Prior to its amendment in 1972, subdivision (b) of section 23332 provided that subdivision (a) of that section was applicable in the computation and payment of taxes for taxable years beginning prior to January 1, 1973. Since appellant's final taxable year commenced prior to January 1, 1973, respondent concluded that the tax for appellant's final taxable year must be computed under subdivision (a) of section 23332. However, after its amendment in 1972, subdivision (b) of section 23332 provided, in pertinent part:

(b) The provisions of subdivision (a) shall be applied only with respect to taxpayers which dissolve or withdraw before January 1, 1973. On and after such date, the tax for the taxable year in which the taxpayer ceases doing

Appeal of Ted M. Walsh and Associates, Inc.

business, dissolves or withdraws shall be determined under the appropriate provisions of **Section 23151.1, .. (Stats. 1972, ch. 773, p. 1388.)**

The act **which** contained the amendment to subdivision (b) of section 23332 also provided for a similar amendment of subdivision (c) of section 23151.1, also making the latter applicable with respect to corporations which cease doing business, dissolve or withdraw after December 31, 1972, rather than with respect to taxable years beginning after that date. (Stats. 1972, ch. 773, p. 1385.) Thus, by virtue of the above amendments, the Legislature clearly provided that a corporation dissolving prior to January 1, 1973 must compute its final year's tax under subdivision (a) of section 23332, while a corporation dissolving on or **after** that date must compute its final year's tax under subdivision (c) of section 23151.1. In accordance with the clear language of the 1972 amendments to **sections** 23332 and 23151.1, therefore, we must conclude that the tax for appellant's taxable year of dissolution should have been computed under subdivision (c) of section 23151.1. Accordingly, in computing the tax for its taxable year of dissolution, appellant is entitled to the credit provided by subdivision (a) of section 23201.

Respondent apparently contends that allowance of the credit in appellant's case would be contrary to the intent of the Legislature in providing for such credit, since appellant would, in effect, escape the tax for its second taxable year even though it was required to pay only the minimum tax prescribed in section 23153 for its final taxable year. However, there is no language in the 1972 amendments to sections 23332 or 23151.1 which indicates that the Legislature intended to limit the credit on the basis of the amount of tax paid by a particular taxpayer for its final taxable year. To the contrary, the plain language of the statutes in question indicates that the Legislature intended to make the credit available to a taxpayer computing its final year's tax under subdivision (c) of section 23151.1, without regard **to the** amount of tax paid by the taxpayer for its final taxable year. (Cf. FTB LR 363, Dec. 14, 1973.)

Respondent also contends that the effective date of the amendments to sections 23332 and 23151.1 was March 7, 1973 and, therefore, that the amendments are **not** applicable to corporations which dissolved prior to

Appeal of Ted M. Walsh and Associates, Inc.

that date. However, it is well settled that the operative date of a statutory provision may precede its effective date. (Tevis v. San Francisco, 43 Cal. 2d 190 [272 P. 2d 757] (1954); Appeal of Manufacturers Bank, Cal. St. Bd. of Equal., June 4, 1970.) According to the express language of the amendments in question, a corporation dissolving on or after January 1, 1973 must compute its final year's tax under subdivision (c) of section 23151.1, and that date is controlling with respect to computation of the final year's tax for such corporations regardless of the fact that the amendment's **effective date is** March 7, 1973.

Respondent's final argument directs our attention to section 15 of the act which added sections, 23151.1 and 23201 to the Revenue and Taxation Code. Section 15 provides:

The provisions of this act, except as may otherwise be specifically provided, shall be applied with respect to the computation of taxes on or measured by net income of **taxable** years beginning after December 31, 1972. (Stats. 1971, ch. 1304, p. 2567.)

It is respondent's position that since appellant's final taxable year commenced prior to January 1, 1973, section 15 precludes appellant's utilization of the credit provided by section 23201 in computing its final year's tax. Thus, **the** narrow question presented in this regard is whether section 15 governs the applicable date of section 23201.

It is well established that statutes which are part of a general statutory scheme should receive a sensible and consistent construction, so as to effectuate the legislative intent and, if possible, avoid unjust or absurd results. (Beauchamp & Brown Groves Co., 44 T.C. 117, 121 (1965), aff'd, 71 F.2d 942 (9th Cir., 1967); J. C. Penney Co., 37 T.C. 1013, 1017, aff'd, 312 F.2d 65 (2d Cir. 1962); Select Base Materials v. Board of Equalization, 51 Cal. 2d 640 [335 P. 2d 672] (1959).)

As we have previously indicated, it is our opinion that the credit provided by section 23201 was intended to benefit any taxpayer required to compute its final year's tax under the "double" tax provisions of subdivision (c) of section 23151.1. Moreover, sections 23201 and 23151.1 are part of a comprehensive legislative

Appeal of Ted M. Walsh and Associates, Inc.

scheme designed to change the method of computing the tax **liability** of dissolving or withdrawing corporations. Therefore, it is evident that the applicable date of section 23201 was intended to coincide with the applicable date of section 23151.1 and the related statutes. Thus, as initially enacted, subdivision (c) of section 23151.1 and section 23201 were applicable only with respect to taxable years beginning after December 31, 1972. However, with the amendment of subdivision (c) of section 23151.1 to make it applicable with respect to final taxable years ending after December 31, 1972, we believe the Legislature effected a corresponding change in the applicable date of section 23201. Accordingly, we **conclude** that the applicable date of section 23201 is directly related to and governed by the corresponding applicable date of subdivision (c) of section 23151.1, and not the general language of section 15.

Our conclusion in this regard is further **sup-**ported by the fact that application of section 15 in the manner proposed by respondent would lead to inconsistent and unjust results. If section 15 is construed to govern the applicable date of section 23201, any taxpayer with a final taxable year beginning prior to January 1, 1973 will be deprived of the credit even though clearly sub-**ject** to the "double" tax provisions of subdivision (c) of section 23151.1. **Moreover**, if it is concluded that the applicable date of section **23201** is governed by the general language of a provision such as section 15, then it is equally arguable that section 23201 as amended (Stats. 1971, 1st Ex. Sess., ch. 1, p. 5051) is subject to the general **language** of subdivision (f) of section 317 of that act, **1/** in which case any taxpayer with a taxable year beginning after December 31, **1970** would be entitled to claim the credit in computing its final year's tax. It is obvious that the Legislature did not intend the illogical results that follow from respondent's construction of section 15.

1/ (f) **All** other sections of this act affecting changes in the **Personal** Income Tax Law, unless otherwise specified in such sections or in this **section**, shall be applied in the computation of taxes for taxable years beginning after December 31, 1970. (Stats. 1971, 1st Ex. Seas., ch. 1, p. 5132.)

Appeal of Ted M. Walsh and Associates, Inc.

For the reasons set forth above, we conclude that respondent's action in this matter must be reversed. We note at this point, however, that appellant may have already received from respondent a refund of the minimum tax that was submitted with appellant's return for its final taxable year. Also, the record on appeal indicates that appellant improperly computed its final year's tax under subdivision (a) of section 23332, rather than under subdivision (c) of section 23151.1. Therefore, the refund to which appellant is entitled by virtue of the disposition of this appeal must be reduced to reflect any prior refund and the correct computation of appellant's final year's tax under subdivision (c) of section 23151.1.

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 Ted M. Walsh and Associates, Inc., for refund of franchise tax in the amount of \$2,372 for the taxable year ended February 5, 1973, be and the same is hereby reversed, and that the refund be computed in accordance with the views expressed in this opinion.

Done at Sacramento, California, this 7th day of **April , 1977, by the State Board of Equalization.**

William K. Bunt Chairman
Irvin S. Gentry, Member
George C. Keely, Member
_____, Member
_____, Member

ATTEST: W. W. Dunlop, Executive Secretary