

Appeal of Kaye Apartment Corporation., et al.

The **sole issue** presented by this appeal is whether respondent properly included unreported installment **income in the 1976 income year** of Kaye Apartment Corporation (hereinafter referred to as "appellant").

On **September 4, 1975**, appellant sold its only asset, an **apartment building**,--at a gain of **\$98,476.42**. Pursuant to Revenue and Taxation Code **section 24668**, appellant elected to report **the gain** from the sale of its apartment building under the installment method and reported income of **\$18,692.16** from the installment payment received during the income year ended June 30, 1976; the remaining **\$79,784.26** was not reported as income on appellant's 1976 franchise tax return.; Subsequent to the sale of its apartment building, appellant filed a certificate of election to wind up and dissolve. The installment note representing the profit from the sale was distributed to appellant's shareholders during the 1976 income year.

Upon audit, respondent determined that all of the gain from the sale of the apartment building should have **been reported on appellant's franchise tax return for the year in issue** since that was the last year appellant was subject to the franchise tax measured by its net income. Thereafter, respondent issued a proposed assessment of additional franchise tax increasing appellant's income for its 1976 income year by **\$79,784.26**.

Appellant subsequently paid the proposed assessment and filed a claim for refund. In support of its claim, appellant noted that, while it had filed a certificate of **election to wind up and dissolve** on March 1, 1976, it had not formally dissolved until May 24, 1977. Consequently, it argued, only the **\$18,692.16** in gain from the installment payment received during the, **1976 income year** should have been **reported on its** franchise tax return for that year: the remaining **\$79,784.26 in income** should have been attributed to the subsequent **income year** since that was the last year of its corporate existence. Appellant also maintained that respondent's acceptance of **its shareholders' personal income tax returns for the years 1976 through 1978**, in which they **reported income from the installment note** distributed to them in 1976, estopped respondent's action in this matter. After **consideration** of these

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arguments, respondent denied appellant's claim for **refund**, thereby resulting in this appeal.

Every corporation doing business within California is subject to the franchise tax, except as otherwise set forth in section 23151.1 of the Revenue and Taxation Code. The term "doing business" means actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. (Rev. & Tax. Code, § 23101.) The record of this appeal clearly reveals that appellant ceased "doing business" during the income year ended June 30, 1976; it distributed its only assets to its shareholders during that year and **did not** engage in any income-producing activities thereafter.

In pertinent part, subdivision (d) of section 23151.1 provides:

(d) With respect to 'corporations which cease doing business in a taxable year beginning after December 31, 1972 ... the tax for the taxable year of cessation shall be:

(1) According to or measured by its net income for the next preceding income year, to be computed at the rate prescribed in Section 23151, plus

(2) According to or measured by its net income for the income year during which the corporation ceased doing business, to be computed at the rate prescribed in Section 23151..

Revenue and Taxation Code section 24672 deals with the reporting of unreported income on installment obligations in the year of dissolution. In relevant part, subdivision (a) of that section provides as follows:

Where a taxpayer elects to report income arising from the sale or other disposition of property as provided in this article, and the entire income therefrom has not been reported prior to the year that the taxpayer ceases to be subject to the tax measured by net income

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imposed under Chapter 2 or Chapter 3 of this part, the unreported income, shall be included in the measure of the tax for the last year in which the taxpayer is subject to the tax measured by net income imposed under Chapter 2 or Chapter 3 of this part. . . . (Emphasis added.)

As discussed above, appellant ceased "doing business" during the income year ended June 30, 1976. Accordingly; that was the income year in which it ceased to be subject to the franchise tax measured by net income. Insofar as relevant to this appeal, subdivision (d) of section 23151.1 provides that a corporation which ceases "doing business" in a taxable year beginning after December 31, 1972, as did appellant, is subject to the franchise tax measured by its income for both the preceding income year and the income year in which it ceases "doing business." Correspondingly, section 24672 provides that unreported installment income must be included in the measure of the tax for the last year in which the taxpayer is subject to the franchise tax measured by net income, i.e., the year in which the taxpayer ceases "doing business."

While it is true that appellant's corporate existence continued until May 24, 1977, the income year ended June 30, 1976 was the last year for which appellant was subject to the franchise tax measured by its net income in that it ceased "doing business" during that year. Consequently, we must conclude that respondent, in accordance with section 24672, subdivision (a), properly included appellant's unreported installment income in the measure of the tax for its 1976 income year.

Appellant has noted that its shareholders reported income from the installment note that it distributed to them in 1976 on their personal income tax returns for the years 1976 through 1978. Consequently, it argues, to sustain respondent's action in this matter will result in double taxation of the same income. While it is possible that appellant's shareholders may have personal claims for refund for those years in which they paid tax on the income derived from payments made on the installment note (see Rev. & Tax. Code, § 174031, that possibility does not affect the determination of appellant's proper franchise tax liability.

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Appellant's final argument is **that** respondent's acceptance of its shareholders' personal income tax returns constituted a tacit acknowledgment that appellant had properly reported the installment income from the sale of its asset and estops respondent **from now** challenging its reporting thereof. In an analogous case, however, we held that respondent's unquestioning acceptance of returns for more than ten years did not estop it from challenging subsequent returns filed on the same theory. (Appeal of -George M. and Georgia M. Webster, Cal. St. Bd. of Equal., May 10, 1977.) There is no reason to reach a **different** conclusion in the present case.

For the above reasons, respondent's action in this matter will be sustained.

