



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
SANSOME PHOTOS, INC.)

Appearances:

For Appellant: Herbert H. Simmons

For Respondent: Terry L. Collins
Counsel

OP IN I ON

This appeal is made pursuant to section 26075, subdivision (a), of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Sansome Photos, Inc., for refund of franchise tax in the amount of \$1 or more for the income year ended May 31, 1981, and pursuant to section 25666 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Sansome Photos, Inc., against proposed assessments of additional franchise tax in the amounts of \$94.21 and \$268.19 for the income years 1977 and 1978, respectively.

Appeal of Sansome Photos, Inc.

The issues presented for decision are: (1) whether appellant has carried its burden of proving that it is entitled to credit for taxes paid which may be applied against proposed assessments of additional tax during the years at issue; and (2) whether respondent has properly computed appellant's first-year credit for the income year in which appellant was dissolved.

Sansome Photos, Inc., was incorporated in California on March 18, 1968; and dissolved on May 26, 1981. Upon audit, respondent disallowed claimed deductions for California franchise taxes in the amounts of \$1,046.70 for income year 1977, and \$2,979.81 for income year 1978. In addition, for appellant's final year of operation, respondent assessed a measured tax based upon net income. Respondent also determined that appellant's first-year credit was limited to \$107.35, the amount by which appellant's tax liability for its first full year of operation exceeded the minimum tax in effect. This determination resulted in additional tax due in the amount of \$3.65 for income year 1981.

Appellant does not contest the propriety of the determination for income years 1977 and 1978, but contends that it had made overpayments of tax totaling approximately \$350 between 1968 and 1978 which should be available as a credit. Appellant also contends that respondent did not allow the proper first-year credit for its final year of operation.

With respect to its claim that it had made overpayments of \$350 in previous income years, appellant, through its former sole shareholder, Herbert H. Simmons, submitted a schedule of payments and credits for the period from appellant's incorporation to Mr. Simmons' retirement in 1979. Respondent reviewed this schedule and provided a schedule showing all payments and liabilities for appellant's entire corporate existence. The schedule shows that a credit of \$84.20 is available for offset.

The schedules submitted by appellant do not include its commencing liability and do not account for the income years ended December 31, 1979, December 31, 1980, and May 31, 1981. Respondent has provided a schedule showing the corporate credits and liabilities for appellant's entire existence and has demonstrated that except for the \$84.20 credit noted above, no credit is available for offset. Respondent's determinations are presumed correct and the burden of proof is upon

Appeal of Sansome Photos, Inc.

appellant to demonstrate that respondent's determinations are in error. (Appeal of AMP Incorporated, Cal. St. Bd. of Equal., January 6, 1969; Appeal of Halliburton Oil Well Cementing Company, Cal. St. Bd. of Equal., April 20, 1955.) Accordingly, we conclude that respondent's schedule accurately reflects the status of appellant's account.

For the income year ended May 31, 1981, pursuant to Revenue and Taxation Code section 23151.1, subdivision (d)(2), respondent determined appellant's tax liability to be \$111.00, computed by 9.6 percent of taxable income of \$1,154.00. Revenue and Taxation Code section 23151.1, subdivision (d), provides:

(d) With respect to corporations which cease doing business in a taxable year beginning after December 31, 1972, other than those described in subdivision (b), the tax for the taxable year of cessation shall be:

(1) According to or measured by its net income for the next preceeding 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.

Section 23201, subdivision (a), provides:

In the case of a taxpayer whose tax for the first taxable year was computed under Sections 23222 to 23224, inclusive (or corresponding sections of prior laws), there shall be allowed as a credit against the tax for the taxable year of dissolution or withdrawal, the excess of the tax paid over the minimum tax for the first taxable year which constituted a full 12 months of doing business in this state and whose income has been included in the measure of tax of a succeeding taxable year.

Respondent reviewed its records and determined that the taxes paid by appellant for income year 1969, appellant's first full year of business, were \$207.35. Consequently, pursuant to section 23201, the proper

Appeal of Sansome Photos, Inc.

first-year credit to be allowed appellant is \$107.35. This is the amount which respondent allowed. Further, section 23203 of the Revenue and Taxation Code provides:

The credits provided by sections 23201 and 23202 shall be allowable only upon submission by the taxpayer of evidence establishing to the satisfaction of the Franchise Tax Board the amount of the tax paid pursuant to Sections 23222 to 23224, inclusive (or corresponding sections of prior laws)., and with respect to which the credit is claimed.

Appellant has provided no such evidence. We conclude that respondent has properly computed appellant's first year-credit for the income year ended May 31, 1981.

