

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 074

June 27, 1958

MINIMUM TAX: INACTIVE QUALIFIED FOREIGN CORPORATIONS

Syllabus:

Inactive qualified corporations are subject to the minimum tax until a certificate of withdrawal is filed or until the corporation dissolves in the state of incorporation.

Advice is requested whether an inactive qualified foreign corporation is subject to the minimum tax, in view of the 1951 amendment to Section 23153 of the Bank and Corporation Tax Law.

Prior to 1951 Section 23153 (formerly Section 4(5)) together with other provisions of the law, which are substantially the same as the current provisions, was interpreted by the Attorney General to apply to foreign corporations qualified but not actually doing business in California. (A. G. Op. NS 4439, December 1, 1942). The question is whether the 1951 amendment to Section 23153 changes the meaning of the law in this respect. Although the amendment pertains only to domestic corporations, it is not limited to domestic corporations. There was no intent to remove any taxing authority already provided for in Section 23153 (as interpreted by the Attorney General). Foreign corporations still are required to prepay \$25 upon qualifying and they should continue to be subject to the minimum tax regardless of the actual exercise of their corporate charter in this State. Regulation 23151-4(b) might be read to imply that if a foreign corporation qualifies but never does intrastate business, it is not required to pay a minimum tax. Such an inference is incorrect. If the minimum tax applies at all, it applies to any taxable year regardless of what is done in the preceding years. In fact, the minimum tax paid upon qualification is not refundable. Therefore, qualified foreign corporations are subject to the minimum tax from the time of qualification until actual withdrawal or dissolution in the state of incorporation.