

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 168

November 6, 1957

EXEMPTIONS: APPLICATION FOR EXEMPTION: TIMELY FILING BY COMMENCING CORPORATION

Syllabus:

A beginning corporation must file an application for exemption containing a nonsubversive oath within four months and fifteen days of the date of its incorporation. A failure to file within this period of time will result in a waiver of the exemption for that year.

Advice is requested regarding the time limitation on the filing of Form 190, containing a properly completed nonsubversive declaration by a new corporation which did not file an application for exemption at the time of incorporation.

Under Section 23705 of the Bank and Corporation Tax Law a corporation loses its right to an exemption for the year unless a nonsubversive declaration is filed on or before May 15th of each year (March 15th for cases prior to the 1957 amendment). However, there is no specific direction in either the Law or the Regulations regarding corporations which have incorporated either prior to or subsequent to May 15th of the year in question. In order to supply an equitable basis for this requirement, a beginning corporation will not be required to file by May 15th but shall file an application for exemption, containing a nonsubversive declaration, within four months and fifteen days (two months and fifteen days for cases prior to the 1957 amendment) of its date of incorporation. This period of time is sufficient to prepare the application and is comparable to the time limitations in Section 23705 imposed on corporations incorporated in prior years. Therefore, unless a beginning corporation files an application for exemption, containing a nonsubversive declaration, within four months and fifteen days of its incorporation date, it waives the exemption for that year and is not entitled to a rebate of prepaid tax.

Organizations which failed to file a loyalty declaration in the years prior to January 1, 1957 are referred to Section 26072.5.