

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 223

June 27, 1958

STATUTE OF LIMITATIONS: PROPOSED ADDITIONAL ASSESSMENT

Syllabus:

Where a dispute exists as to whether a corporation was "doing business" for a full 12 month period in its first year of incorporation, a proposed assessment of additional tax liability is subject to the four year statute of limitations.

Advice is requested as to whether a proposed additional assessment of tax liability, arising out of the prepayment provisions of section 23222 of the Bank and Corporation Tax Law, is subject to the limitation provisions of section 25663 of the Bank and Corporation Tax Law when a dispute exists as to whether the taxpayer corporation was doing business for a full 12 month period in its first year of incorporation.

Sections 25670 and 25671 of the Bank and Corporation Tax Law provide for exceptions to the deficiency assessment provisions of Article 1 of Chapter 20 of the Bank and Corporation Tax Law. There is no provision for administrative review of any tax imposed pursuant to either section. Because of the "lack of review" feature the federal courts have construed the term "mathematical error" to mean errors in arithmetic only. They reason that the failure to provide for review of a determination of mathematical error was due to the fact that there can be no dispute as to a matter of arithmetical computation. Repetti v Jamison, 131 F. Supp. (1955), aff'd 239 F2d 901 (1956). Applying the same reasoning to our law would limit section 25670 to errors in arithmetical computation only and section 25671 would be limited to cases where no dispute could exist, as for example, where the first year was a period of less than 12 months or the taxpayer failed to make any prepayment whatsoever.

Accordingly, where a dispute exists as to when a corporation commenced "doing business" the tax liability is based upon the "doing business" question and is not "due to mathematical error, or failure . . . to compute property" (Section 25670) nor is it "based upon the net income as disclosed by the return". (Section 25671)

Since the instant case does not come within the exceptions provided, assessment and collection is subject to the limitation provisions of section 25663 of the Bank and Corporation Tax Law.