CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 363

August 24, 1973

CORPORATION: COMMENCING YEAR CREDITS AS APPLIED TO DISSOLVING YEAR LIABILITY

Syllabus:

Where the credit or credits allowable under Revenue and Taxation Code Sections 23201 and 23202 exceed the tax for the taxable year of cessation of doing business, dissolution, or withdrawal, the excess may constitute a refundable overpayment under section 26071.

Advice has been requested whether the credits mentioned in Revenue and Taxation Code Sections 23201 and 23202 are limited to the amount of the tax for the final year or if any excess constitutes an overpayment that may be refunded or applied to any other tax due.

Said code sections were enacted in 1971, and were added by Stats. 1971, Chapter 1304, effective October 20, 1971, pursuant to Senate Bill 967. There has been no judicial determination of these new enactments on the issue in point.

A review of the legislative history clearly shows that legislative intent concerning a credit being allowed in the taxable year of dissolution or withdrawal in the case of a corporation Which was subject to the commencing corporation provisions of the present or predecessor laws would the amount measured by the tax paid for the first year which constituted a full 12 months of doing business. The Legislature intended that if the credit exceeds the tax due in the final year, a refund is allowed. The foundations of the legislative intent were twofold:

1. For each year's income to serve as a measure of tax once, but only once; and

2. To equalize tax rate over the operative life of the corporation, more in keeping with the statutory franchise rate, regardless of whether dissolving year's income was high or low.

Accordingly, it is held that the excess of credits from the commencing year over the liability for the dissolving year should be credited against any other taxes that are due from the taxpayer and the balance refunded to the taxpayer.