

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 176

October 21, 1957

EXEMPTIONS: WAIVER BY FAILURE TO FILE TIMELY FORM 199

Syllabus:

Failure to file a timely Form 199 containing a nonsubversive declaration will result in a waiver of the exemption for the taxable year for which it was required.

X, a diversified management company, exempt from taxation, reported on a fiscal year basis ending on October 31st. Under Section 23772 of the Bank and Corporation Tax Law and appropriate regulations thereunder, X is required to file an information return (Form 199) by March 15th of each year. In 1955 X filed a Form 199 containing a nonsubversive declaration on April 25, 1955.

The first paragraph of Section 23705, which requires the nonsubversive declaration by corporations obligated to file Form 199, sets no time limitation on the filing. Advice has been requested whether the failure to file the nonsubversive declaration by March 15th results in a waiver of the exemption.

The basic purpose of Form 199 is to submit information enabling the Board to confirm a taxpayer's right to a continued exemption. As a claim for exemption, Section 23705 requires that it contain the nonsubversive declaration. In accordance with the mandate of the legislature the Board has established this requirement in Regulation 23705.

Section 23772 delegates to the Board the duty to determine the time and manner for filing Form 199. Pursuant to this authority, Regulation 23772b provides that the return must be filed within four months and fifteen days of the close of the period for which the return is made.

The second paragraph of Section 23705 designates March 15th as the last day for filing the declaration by exempt corporations not obligated to file Form 199 or 109. Since the legislature established a time limitation for one group of corporations it would be illogical to ascribe to them an attempt to exclude from any limitation two other groups of corporations whose activities are much larger in scope.

It is therefore concluded that the legislature was entirely familiar with the time requirements which this Board was directed to establish under Section 23772 and intended such limitations to apply to those exempt corporations obligated to file Form 199.

Section 23705 was amended in 1957 to provide that any incorporated organization which claims any exemption shall file a nonsubversive declaration on or before May 15th of each year, and further a failure to file the declaration shall subject the organization to tax.

Section 23772 was amended to change the filing date for the required annual return to the fifteenth day of the fifth full calendar month following the close of the income year and further a failure to file a timely declaration subjects the corporation to tax. The amendments to both sections are effective September 11, 1957.

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