



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
NIF LIQUIDATING COMPANY)

Appearances:

For Appellant: Daniel J. Cooper
Certified Public Accountant

For Respondent: Kendall E. Kinyon
Counsel

O P I N I O N

This appeal is made pursuant to section 26075, subdivision (a), of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of NIF Liquidating Company for refund of franchise tax in the amount of \$6,799 for the income year ended July 31, 1975.

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Appellant is a California corporation engaged in farming. In January 1976, pursuant to an approved extension of time, appellant filed its franchise tax return for the income year ended July 31, 1975, reporting and paying a tax of \$41,291. It also filed a federal return for the same period. Thereafter, appellant elected to file a consolidated federal return with its parent, which required appellant to adopt its parent's calendar year, thus changing its accounting period. To facilitate this change, appellant filed a federal short year return for the period August 1, 1974, through December 31, 1974. On September 15, 1976, appellant attempted to change its accounting period for state purposes by filing an amended franchise tax return for the same short year stating that the amended return was "necessary to conform the California returns [sic] to that of the Federal." The amended return requested a refund of \$6,799. Respondent treated the amended return as a claim for refund and denied the claim on the basis that it had not given prior approval for the change of accounting periods and did not presently approve of the change.

Section 24633 of the Revenue and Taxation Code provides, in pertinent part, that "[i]f a taxpayer changes its annual accounting period, the new accounting period shall become the taxpayer's income year only if the change is approved by the Franchise Tax Board." (Emphasis added.) This section is substantially identical to section 442 of the Internal Revenue Code of 1954.

Although section 24633 is clear and unambiguous, appellant contends that, in this instance, respondent's permission to change accounting periods was not required. To support its position appellant relies on the federal regulation which provides:

A subsidiary corporation which is required to change its annual accounting period under Section 1.1502-76, relating to the taxable year of members of an affiliated group which file a consolidated return, need not file an application ... with respect to such change. (Treas. Reg. § 1.442.1(d), T.D. 7244, 1973-1 Cum. Bull. 395, 396.) (Emphasis added.)

It is appellant's contention that the quoted federal regulation is controlling since respondent has promulgated no regulations interpreting section 24633 of the

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Revenue and Taxation Code. (See Cal. Admin. Code, tit. 18, reg. 26422.) Regulation 26422 provides:

In the absence of regulations of the Franchise Tax Board and unless otherwise specifically provided, in cases where the Bank and Corporation Tax Law conforms to the Internal Revenue Code, regulations under the Internal Revenue Code shall, insofar as possible, govern the interpretation of conforming state statutes, with due account for state terminology, state effective dates, and other obvious differences between state and federal law pertaining to, but not limited to, such matters as tax rates, income and taxable years, jurisdiction, and cross-references 'to other related statutes and regulations.

In this case, however, an obvious difference between federal and state law does exist. California law does not allow affiliated groups of corporations other than railroads the privilege of filing consolidated returns. Accordingly, in view of this obvious difference, Treasury Regulation 1.442-1(d), which pertains specifically to consolidated returns, cannot be used to interpret section 24633 of the Revenue and Taxation Code.' Instead, the appropriate federal regulation is Treasury Regulation 1.442-1(c), the requirements of which appellant did not fulfill since the short period return was not timely filed and appellant did not include the required information statement. Nevertheless, appellant persists in arguing that even where obvious differences exist, the federal regulation should apply.

In this respect appellant relies on a 1978 letter in which respondent agreed to accept as guidelines certain federal provisions regarding the period for which income from intercompany transactions was reportable for state tax purposes where a consolidated group determined income on the basis of a combined report including the same members. Appellant's argument is not persuasive. Not only is there no indication that the 1978 letter has any application to the appeal year, 1975, but the letter also applies to a group filing a California combined report. While there are certain parallels between a federal consolidated return and California's combined report (see generally, Keesling and Warren, *The Unitary Concept in the Allocation of Income*, 12 *Hastings L.J.* 42 (1960)), appellant is not a member of a group filing a combined report.

