

Print Request: Current Document: 4

Time of Request: February 22, 2005 04:49 PM EST

Number of Lines: 70

Job Number: 1862:33015509

Client ID/Project Name:

Research Information:

TX Comptroller of Public Accounts Hearing Decisions and Administrative Rule
elias lorenzana

Send to: LORENZANA, ELIAS
TEXAS WORKERS COMPENSATION COMMISSION
7551 METRO CENTER DR. STE 100
AUSTIN, TX 78744

4 of 18 DOCUMENTS

NAME: RE: * * *

NUMBER: HEARING NO. 41,689

COURT: COMPTROLLER OF PUBLIC ACCOUNTS OF THE STATE OF TEXAS

CITE: 2003 Tex. Tax LEXIS 46

DATE: April 3, 2003

PANEL: [*1]

TIMOTHY MASHBURN, Administrative Law Judge

COUNSEL: ELIAS V. LORENZANA, JR., Representing Administrative Hearings Section

* * *, Representing Petitioner

OPINIONBY: MASHBURN

TAXPAYER NO.: * * *

AUDIT OFFICE: * * *

AUDIT PERIOD: 2001

FRANCHISE TAX/RDT

COMPTROLLER'S DECISION

PRELIMINARY COMMENTS:

This case was the subject of oral hearing before the undersigned Administrative Law Judge (ALJ) on February 28, 2003. Petitioner failed to appear at the oral hearing. Assistant General Counsel Elias V. Lorenzana, Jr., appeared and represented the Administrative Hearings Section (AHS).

The ALJ took official notice of all records of the Comptroller's office that pertain to the Petitioner and the issues involved in the case. Unless otherwise indicated, all Section references are to TEX. TAX CODE ANN. (Vernon 2002) and all references to Rules are to Title 34, Texas Administrative Code (2002).

PETITIONER'S CONTENTION:

Petitioner contends that a business loss carryover of * * *, a Hawaii corporation, may properly be transferred to and claimed by Petitioner, a Texas corporation, in calculating Petitioner's franchise tax liability for Report Year 2001.

FINDINGS OF FACT:

1. Petitioner, [*2] * * *, is a Texas corporation subject to the franchise tax provisions of Subtitle F, Chapter 171, Texas Tax Code.

2. Petitioner was incorporated as a Texas corporation on January 31, 1997, and thereafter filed its 1998-2001 franchise tax returns, followed by amended returns for each period, seeking to apply business loss carryovers of * * *, a Hawaii corporation (COMPANY A), which was dissolved on February 28, 1997.

3. Petitioner's amended return for Report Year 2001, which included the COMPANYA business loss carryover, was rejected. Petitioner sought redetermination, resulting in this proceeding.

4. Petitioner previously sought redetermination in Hearing 41,242 of the rejection of amended franchise returns for Report Years 1998, 1999 and 2000, that also included the business loss carryovers of COMPANYA. Comptroller's Decision 41,242, dated June 24, 2002, disallowed such business loss carryovers.

5. The facts, and the contention of Petitioner, presented here are identical to those involved in Comptroller's Decision 41,242 (2002).

CONCLUSIONS OF LAW AND DISCUSSION:

Petitioner's contention should be denied.

Rule 3.555(g), effective for all franchise tax reports originally [*3] due after January 1, 1992, expressly provides that a corporation may not convey, assign or transfer a business loss to another entity. The rule was expressly incorporated into Section 171.110(e) effective September 1, 2001. n1 The Comptroller's precedent decisions consistently and steadfastly apply and enforce Rule 3.555(g) according to its express terms. Comptroller's Decisions 38,267 (2001), 37,672 (1999), 36,277 (1998) and 36,030 (1996). n2 Based thereon, in Comptroller's Decision 41,242 (2002) the Comptroller denied Petitioner's identical contention concerning its amended returns submitted for Report Years 1998-2000.

n1 Acts 2001, 77 Leg., ch. 1275, § 2, eff. Sept. 1, 2001.

n2 Comptroller's Decision 36,030 (1996) was recently affirmed by Summary Judgment granted in favor of the Comptroller in * * *.

Rule 3.555(g), Comptroller's Decision 41,242 (2002) and the cases cited therein are determinative of this matter and require that Petitioner's contention be denied.

RECOMMENDATION:

Based upon the foregoing findings of fact, conclusions of law, and discussion contained herein, the ALJ recommends that Petitioner's contention be denied and that the rejection of Petitioner's [*4] amended return for Report Year 2001 be upheld.

Signed April 3, 2003.

ORDER OF THE COMPTROLLER

The above decision of the Administrative Law Judge, resulting in Taxpayer's liability as set out in Attachment "A" which is incorporated by reference, is approved and adopted in all respects. This decision becomes final twenty-three (23) days from the date of this Order, and the total sum of the tax, penalty, and interest amounts is due and payable within twenty (20) days thereafter. If such sum is not paid within such time, an additional penalty of ten percent of the taxes due will accrue, and interest will continue to accrue.

If a rehearing is desired, a Motion for Rehearing must be filed with the Administrative Law Judge no later than twenty-three (23) days after the date of this Order, and must state the grounds upon which the motion is based.

RENDERED and ISSUED April 3, 2003.

CAROLE KEETON STRAYHORN, Comptroller of Public Accounts of the State of Texas

115BC8

***** Print Completed *****

Time of Request: February 22, 2005 04:49 PM EST

Print Number: 1862:33015509

Number of Lines: 70

Number of Pages:

Send To: LORENZANA, ELIAS
TEXAS WORKERS COMPENSATION COMMISSION
7551 METRO CENTER DR. STE 100
AUSTIN, TX 78744