



BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
FIRST NATIONAL BANK OF SAN JOSE )

Appearances:

For Appellant: R. C. Leib of San Jose and Morrison,  
Hohfeld, Foerster, Shuman & Clark of  
San Francisco, its Attorneys  
For Respondent: Chas. J. McColgan, Franchise Tax Commis-  
sioner

O P I N I O N

This is an appeal pursuant to Section 25 of the Bank and Corporation Franchise Tax Act (Chapter 13, Statutes of 1929) from the action of the Franchise Tax Commissioner in overruling the protest of First National Bank of San Jose to his proposed assessment of an additional tax of \$1,140.26, based upon the return of said bank for the year ended December 31, 1930.

The facts are not controverted and the sole issue presented upon the appeal is whether or not the Commissioner erred in including the sum of \$155,087.88, derived by the Appellant as interest from tax exempt bonds of the United States Government, the State of California and its various subdivisions, in the taxable income of the Appellant under the Act. Section 6 of the Act appears to require such action on the part of the Commissioner in its provision that the term "gross income" shall include "all interest received from federal, state, municipal or other bonds". In arriving at "net income" there is no deduction of such interest provided from "gross income". However, the Appellant contends that the provisions requiring the inclusions of income from the bonds in question is contrary to the Constitution of the United States and cites in support of this proposition the decision of the United States Supreme Court in the case of Macallen Co. v. Massachusetts, 269 U. S. 620.

Without attempting to analyze the problems of constitutional law involved, we are drawn to the conclusion that it is our duty to uphold the action of the Commissioner. As stated in our opinion in the matter of the Appeal of Vortex Manufacturing Company (filed August 4, 1930) it seems to us desirable that this controversy should be settled by the courts whose authority to hold acts of the Legislature invalid cannot be questioned. The power to declare a law unconstitutional is one of the highest attributes of judicial authority. To quote from our decision in the Vortex Manufacturing Company matter: "Although we sit in these matters as a quasi-judicial body, and must decide questions of law as well as of fact, we should not lose sight of the ultimate fact that we are not a court but merely an administrative Board. The right of a ministerial

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office to question the constitutionality of a statute is generally denied. (6 R. C. L. 92.)

Therefore, without attempting to determine the constitutionality of the questioned provisions of the Bank and Corporation Franchise Tax Act we are of the opinion that the action of the Commissioner must be upheld by us. For the purposes of our decision we must regard the law as constitutional and he appears to have followed its provisions.

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that the action of the Franchise Tax Commissioner in overruling the protest of First National Bank of San Jose against a proposed assessment of an additional tax in the amount of **\$1,140.26**, based upon the return of said bank for the year ended December 31, 1930, under Chapter 13, Statutes of 1929, be and the same is-hereby sustained:

Done at Sacramento, California, this 14th day of December, 1931, by the State **Board** of Equalization.

Jno. C. Corbett, Chairman  
R. E. Collins, Member  
**H. G. Cattell**, Member  
Fred E. Stewart, Member

ATTEST: Dixwell L. Pierce, Secretary