



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
KECK INVESTMENT COMPANY)

Appearances:.

For Appellant: A. Calder Mackay and Arthur McGregor,
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 Albert A. Manship, Franchise Tax Commissioner in overruling the protest of the Appellant to his proposed assessment of an additional tax in the amount of \$513.16 based upon its return for the year ended December 31, 1929. It appears that of this amount approximately \$325.00 is all that is now under dispute on appeal and that the tax liability so disputed is the result of the inclusion as taxable of 20.1% of the dividends received by the taxpayer from Union Oil Associate:

The facts concerning the nature of the activity of Union Oil Associates are not controverted. This is a California corporation having as its sole assets certain of the common capital stock of Union Oil Company of California from which oil company the Union Oil Associates receives dividends. The Commissioner determined that 20.18% of these dividends represented revenue from business done outside of the state and accordingly, under Section 8(h) of the Act, classified that portion of the dividends as taxable income. The Commissioner further appears to have assumed that since the sole source of income for Union Oil Associates was the dividends of Union Oil Company of California, a similar percentage of the dividends of Union Oil Associates should be deemed to have arisen from out-of-state sources. This assumption would be correct if Union Oil Associates had done no business itself but had acted as a mere conduit through which the dividends of Union Oil Company of California passed to the stockholders of Union Oil Associates.

Section 8(h) of the Act above mentioned reads as follows:

"Dividends received during the taxable year from income arising out of business done in this State; but if the income out of which the dividends are declared is derived from business done within and without this State, then so much of the dividends shall be

Appeal of Keck Investment. Company

allowed as a deduction as the amount of the income from business done within **this** State bears to the total business done.

"The burden shall be on the taxpayer to show that the amount of dividends claimed as a deduction has been received from income arising out of business done in this State,"

From the facts it is clear that the "**business**" of Union Oil Associates is holding capital stock of Union Oil Company of California. Under the definition of "**doing business**" as that appeared in Section 5 of the Act at the time of its adoption in 1929 and during the period here involved, there might have been some doubt whether or not Union Oil Associates was actually doing business or was acting merely as a conduit for the dividends of Union Oil Company of California. However, for the purposes of this proceeding, Union Oil Associates must be regarded as doing business in California and therefore taxable upon the basis of its net income, because we are informed by the Commissioner that the corporation filed a report disclosing its income for the year **1929** and paid a tax as prescribed under the law.

Inasmuch as Union Oil Associates has reported 20.18% of the dividends which it received from Union Oil Company of California as taxable income, that revenue represents income arising out of business done in this state and the dividends which Union Oil Associates later paid to its own stockholders from these funds could not be considered as arising out of business done outside of this state. When Union Oil Associates reported its dividend revenue from Union Oil Company of California as taxable it did so upon the theory **that this** revenue represented its income on account of the business which it was doing in this state, **viz:** that of a holding company. When the revenue was paid to the Appellant and other **stockholders** of Union Oil Associates it then became dividends from Union Oil Associates received from income arising out of business done in this state and was properly deductible from the net income of the Appellant and the other holding company stockholders under the provisions of Section 8(h) of the Act. It should be observed that this view is shared by Mr. **Chas. J. McCoolgan**, present **Franchise** Tax Commissioner.

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 Albert **A. Manship**, Franchise Tax Commissioner, in overruling the protest of **Keck Investment Company**, a corporation, to his proposed assessment of an additional tax of **\$513.16**, based upon the return of said corporation for the year ended December 31,

Appeal of Keck Investment Company

1929, under Chapter 13, Statutes of 1929, be and the same is hereby modified to the end that all income received by said Appellant as dividends from Union Oil Associates be classified as nontaxable and excluded from the calculation of the additional tax due. Chas. J. McColgan, Franchise Tax Commissioner, is hereby directed to revise the calculation of such additional tax and to proceed in conformity with the views herein expressed

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

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

ATTEST: Dixwell L. Pierce, - Secretary