



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
HUGH B. EVANS, INC.)

Appearances:

For Appellant: Kelby & Lawson, its Attorneys

For Respondent: Albert A. Manship, 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 the Appellant to his proposed assessment of an additional tax of \$2,939.73 based upon return of the corporation for the year ended December 31, 1929.

There appears to be no dispute concerning the facts. The business of the Appellant for oil production and the control of its activities centered primarily in Hugh B. Evans, Jr., who was an officer of the corporation. There was insurance on his life for the benefit of the company and following his death in February 1928 the proceeds of the policy in the sum of \$100,000 were paid to the Appellant.

It has been the position of the Commissioner that the proceeds of this policy constituted a part of the gross income of the corporation (as that term is defined in Section 6 of the Act) and that in arriving at the net income for the basis of the tax, the only deduction in connection with the insurance would be the premiums paid on the policy as provided in subdivision (c) of Section 9 of the Act. On behalf of the Appellant it is claimed that the proceeds of a life insurance policy, under these circumstances, do not constitute taxable income within the meaning of the Act.

The pertinent provisions of the law are as follows:

"The term 'net income', as herein used, means the gross income less the deductions allowed." (Stats. 1929, Chap. 13, Sec. 7)

"In computing net income no deduction shall be allowed for: * * * *

- (c) "Premiums paid on any life insurance policy covering the life of any officer or employee, or of any person financially interested in any

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trade or business carried on by the taxpayer, when the taxpayer is directly or indirectly a beneficiary under such policy, but the amount received under such policy by reason of the death of the insured and the amounts received under life insurance, endowment and annuity contracts of the type whose premiums are disallowed, equal to the total amount of premiums paid thereon shall not be included in gross income." (Stats. 1929, Chap. 13, Sec. 9)

The foregoing was the text of the law at the time of its adoption in 1929 and at the time when the proposed additional assessment under consideration on this appeal was made. In 1931 the provisions of Section 9 were amended to read as follows:

"In computing net income no deduction shall be allowed for:

"Premiums paid on any life insurance policy covering the life of any officer or employee, or of any person financially interested in any trade or business carried on by the taxpayer, when the taxpayer is directly or indirectly a beneficiary under such policy." (Stats. 1931, Chap. 1066, Sec. 3)

The section was twice amended in 1931 and the language above quoted is that of the last amendment which became effective August 14, 1931. A prior amendment had been passed to take effect immediately upon executive approval on February 27, 1931. (Stats. 1931, Chap. 65, Sec. 2).

At the same time that Section 9 of the Act was last amended, Section 6 of the Act was amended through the addition thereto of the following language:

"The term gross income does not include the following items which shall be exempt from taxation under this act:

- (a) "Amounts received under life insurance policies and contracts paid by reason of the death of the insured.
- (b) "Amounts received (other than amounts paid by reason of the death of the insured) under life insurance, endowment or annuity contracts, either during the term or at maturity or upon surrender of the contract, equal to the total amount of premiums paid thereon." (Stats. 1931, Chap. 1066, Sec. 2)

If the law had read in 1929 as it does now, it is clear that the inclusion of the proceeds of the insurance upon

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the life of Hugh B. Evans, Jr., in the computation of the net income of the Appellant would have been unwarranted. It may be inferred that any contrary result under the original act was unintended by the Legislature but, of course, in the administration of the tax, we must be guided by the language as **it is** found in the statutes and may not interpret the law contrary to the plain meaning of what has been said therein.

We must observe that as originally enacted, Section 9 provided that no deduction should be allowed for **premiums** paid on a life insurance **policy** such as this

"but the amount received under such a policy by reason of the death of the insured and amounts received under other life insurance, endowment and annuity contracts of the type whose premiums are disallowed, equal to the total amount of premiums paid thereon shall not be included in gross income,"
(Italics added: Stats. 1929, Chap. 13, Sec. 9)

There is no punctuation between the underscored words and the remainder of the provision which we have quoted,, so that the Commissioner appears to have been justified in his conclusion that the words

"equal to the total amount of premiums paid **thereon**"

were applicable to both the amount received under such a policy and the amounts received under other life insurance, endowment and annuity contracts of the type indicated, Judging by later developments, we might well conclude that the Legislature intended to put appropriate punctuation between the underscored words and the remainder of the sentence so as to exclude entirely from taxation the proceeds of life insurance policies of the type here under consideration. However, in the **absence** of such punctuation the words "equal to the **total amount** of premiums paid thereon" would appear to be applicable to the proceeds from all types of policies mentioned, whether by reason of the death of the insured or because of the occurrence of other events for which provision was made in the contracts.

We regret the apparent hardship on the Appellant, particularly in view of the amended provisions of the law, which show that the Legislature, if it did intend to tax life insurance proceeds has receded from that position, **but** for the reasons indicated, we do not feel warranted in saying that the Commissioner's interpretation of the statute as originally passed was not literally correct.

From the evidence it appears that certain dividends were paid by the insurance company on the policy in question and that these amounted to \$2,577.49. The cost of the insurance which would otherwise have been \$8,796.50 under the premium rates specified, was thus reduced to \$6,219.01 and the proceeds of the policy which the Commissioner has included in the **taxabi**

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net income of the Appellant appear to have been \$93,780.99, i.e., the amount received under the policy by reason of the death of the insured, less the total amount of premiums paid thereon. While there seems to have been some controversy as to the consideration of the dividends in arriving at the amount to be included in the taxable income of the Appellant, it appears that counsel for the Appellant now concede that \$93,780.99 is the correct figure to use assuming that life insurance proceeds are taxable at all.

O R D E R
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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 **actio** of Albert A. Manship, Franchise Tax Commissioner, in overruling the protest of Hugh B. Evans, Inc., a corporation, against a tax based upon its net income for the year 1928, pursuant to Chapter 13, Statutes of 1929, be and the same is hereby sustained.

Done at Sacramento, California, this 16th 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. Stewart, Secretary