



BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
THE CALIFORNIA NATIONAL BANK OF SACRAMENTO)

Appearances:

For Appellant: R. T. Devlin and Roy W. Blair, trust officer
of the bank
For Respondent: Chas. J. **McColgan**, Franchise Tax Commissione

O P I N I O N

This is an appeal under Section 25 of the Bank and Corporation Franchise Tax Act (Statutes of 1929, Chapter 13, as amended) from the action of the Franchise Tax Commissioner in overruling petitioner's protest against a proposed assessment of additional tax in the amount of \$2,273.62, with interest.

The Appellant, The California National Bank of Sacramento, parent corporation, filed a franchise tax return on March 14, 1931, for the year ended December 31, 1930, and consolidated in its return the income and expenses of California Trust and Saving Bank and California National Corporation, subsidiary corporations. The Commissioner ruled that the return was not properly made inasmuch as an amendment to Section 14 of the Act in 1931 prohibits a consolidated return of a bank and a general corporation. The Commissioner proceeded to segregate the transactions of the above three corporations and computed the taxes according to the net income earned by the banks and the general corporation separately. By this procedure, the California National Bank of Sacramento was denied the benefit of the operating loss of California National Corporation. This resulted in an increased net income and necessitated the proposed additional assessment of \$2,273.62.

Under Section 14 of the Act as adopted in 1929, an affiliate, group of banks or corporations were permitted to file a consolidated return. But in 1931, Section 14 was amended so as to deny to a bank the privilege of filing a consolidated return with a nonbanking corporate member of the affiliation.

The Appellant contends that the 1931 amendment to Section 14 cannot be held as applying to its return inasmuch as the amendment can have only a prospective and not a retroactive application. It is apparently the Appellant's position that inasmuch as the income being reported is that of 1930, the Appellant cannot be required to change its method of reporting such income subsequent to 1930.

We are unable to agree with Appellant in this contention. It is to be noticed that the amendment to Section 14 became effective on February 27, 1931. Appellant's return for the year 1930 was not filed until March 14, 1931, and it was not required to be filed at any time prior thereto (Section 13 of the Act).

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It is thus readily to be seen that the amendment to Section 14 can be held to be applicable to Appellant's return for the year 1930 without being retroactive.

It is true that the income to be returned was the income of Appellant for the year 1930, a year prior to the effective date of the amendment to Section 14. But this income is to be used only for the purpose of computing the tax liability of Appellant for the privilege of exercising its corporate franchise during the year 1931, the current year as of the time the amendment to Section 14 became effective. Hence, the application of the amendment to Section 14 to Appellant's return for the year 1930, could not affect Appellant's tax liability for years prior to the effective date of the amendment. Consequently, we are unable to perceive any reason why the amendment to Section 14 should not be applicable to returns for the year 1930.

It is also contended that the denial to banks, including national banks, of the privilege of filing consolidated returns with nonbanking corporations, while other corporations are allowed this privilege, results in discriminating against national banks in violation of the equal protection clause of Amendment XIV of the United States Constitution, and in violation of Section 5219 of the Revised Statutes of the United States.

It is apparent that we could not consider this contention without questioning the constitutionality of Section 14 of the Act. Such action on our part would be contrary to our general policy as expressed in our opinion in the Appeal of Vortex Manufacturing Company, decided by us on August 4, 1930, and in the Appeal of The Petroleum Rectifying Company, decided by us on April 20, 1932.

Although there is possibly considerable merit in the above contention (see a chapter by R. J. Traynor, Associate Professor Of Law, University of California, on the Bank and Corporation Franchise Tax Act in Ballantine's California Corporation Laws, 1932, at p. 757), we do not believe that Section 14 is so clearly unconstitutional as to warrant our departure from our general policy with respect to considering attacks on the constitutionality of legislation.

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 The California National Bank of Sacramento, a bank, against a proposed assessment of an additional tax in the amount of \$2,273.62, 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.

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Done at Sacramento, California, this 20th day of April,
1932, by the State Board of Equalization.

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

ATTEST: Dixwell L. Pierce, Secretary