BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of

THE PETROLEUM COMPANY

Appearances:

For Appellant: Charles T. Wilson

For Respondent: Chas. J, McColgan, Franchise Tax Commission<

OPINION

This is an appeal under Section 25 of the Bank and Corporation Franchise Tax Act (Chapter 13, Statutes of 1929, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of The Petroleum Company against a proposed assessment of an additional tax in the amount of $942.62, based on Appellant's return for the taxable year ended December 31, 1930.

The problem involved in this appeal is whether certain taxes on oil and gas leases paid by the Appellant to counties and municipalities are or are not to be considered, for offset purposes under the Bank and Corporation Franchise Tax Act, as personal property taxes. If said taxes are to be considered as personal property taxes, then 100% of said taxes should have been allowed as an offset against the Appellant's franchise tax, as claimed by Appellant. If, however, said taxes are not to be considered as personal property taxes, then the offset allowed should not have exceeded 10% of such taxes, as claimed by the Franchise Tax Commissioner.

This problem is substantially the same as the problem involved in the appeal of Catalina View Oil Company decided by us on that date. In this appeal, we held that taxes on oil leases, derricks, engines, oil wells, tanks and boilers should not be considered as personal property taxes for offset purposes. We believe that this holding should control our decision in the instant appeal.

The Appellant argues that oil and gas leases are personal property inasmuch as it was held in Graciosa Oil Co. **v.** Santa Barbara, 155 Cal. 140, that an oil lease is a chattel real, and a chattel real is personal property under the holdings in Summerville v. Stockton Milling Co., 142 Cal. 529, and Jeffers v. Easton 113 Cal. 352.

In Jeffers v. Easton at page 352 it is stated that

"a term for years is only personal property--

> a chattel real. "An estate for life, * * * is a freehold; but an estate for 1,000 years is only a chattel, and reckoned part of the personal estate'. (2 Blackstone's Commentaries 143, 385-87)"

This statement was quoted with approval in Summerville v. Stockton Milling Co.

It is to be noted that these cases did not involve the question of classification of property for taxing purposes. Whatever may be the rule for other purposes, we are of the opinion that it is definitely settled in this State that leasehold interests and possessory rights in land are to be considered for taxing purposes as "real estate", as that term is defined in Section 3617 of the Political Code, and hence are excluded from the term "Personal property" for taxing purposes.

In Craciosa Oil Co. v. Santa Barbara, 155 Cal. 140, at page 144, it was stated in referring to the interest of the lessee under an oil lease, that "the right vested in plaintiff is an estate for years, so far as is necessary for the purpose of taking oil therefrom, and it carries with it the right to extract the oil and remove from the premises. This right constitutes, for the term prescribed, a servitude on the land and a chattel real at common law."

But it is to be noted that the statement above quoted was made in the course of an argument to support the court's holding that the interests referred to were property subject to taxation. The Court did not in any way intimate that it was deciding that such interests were personal property for taxing purposes. In fact, in the very same case at page 146, the Court states:

> "The strata of oil, or oil-bearing sand, constitute, * a part of the land which may be the subject of separate ownership. There may be a separate 'claim to' this part of the land, as well as a separate 'claim to' a portion of the surface. A 'claim to' take this stratum from its place and then convert it to one's own use may well be termed a claim to land, although not accompanied by actual physical possession of the subterranean deposit. The lease also gives plaintiff the right to pos-session of the surface of the ground, so far as may be necessary to enable it to bore for and extract oil and as an incident to the main purpose of the contract. The plaintiff's rights may therefore, in these aspects, be classed as real estate within the first clause of Section 3617. The oil strata also consti-tute 'minerals in and under the land',and the rights and privileges of plaintiff under the lease are clearly 'rights and privileges apper-taining' to such minerals, and, consequently,

are real estate within the meaning of the second subdivision aforesaid."

The statement last quoted and the cases of Mohawk Oil Co. v. Hopkins, 196 Cal. 148, and Ventura County v. Barry, 189, both decided subsequently to the case of Graciosa Oil v. Santa Barbara, leave no room for questioning the classification of taxes on oil and gas leases as real estate taxes.

ORDER

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 Chas, J. McColgan, Franchise Tax Commissioner, in overruling the protest of The Petroleum Company, a corporation, against a proposed assessment of an additional tax of $942.62, with interest, under Chapter 13, Statutes of 1929, be and the same is here sustained.

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

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

ATTEST: Dixwell L. Pierce, Secretary