BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of

REX OIL COMPANY

'Appearances:

For Appellant: Carl G. Grabe, Secretary and Treasurer of said corporation; R. J. Clark, Accountant

For Respondent: Chas. J. McColgan Franchise Tax Commissioner

OPINION

The petitioner appeals to this Board in pursuance of 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 taxes in the amount of $1,956.15.

In its return for the taxable period ended December 31, 1930, the Appellant classified as personal property taxes, certain taxes paid by it during the year to local governing agencies on oil and gas leases, wood derricks, 'oil wells, boiler house and warehouse, and hence offset from its franchise tax one hundred per cent of such taxes. The Commissioner classified the above taxes as real estate taxes and allowed an offset of but ten per cent of such taxes in accordance with Section 4 of the Bank and Corporation Franchise Tax Act. This action of the Commissioner resulted in the proposed assessment of additional taxes.

In the Appeal of the Catalina View Oil Company, decided by us on this date; we held that taxes paid to local authorities on oil leases, derricks, engines, oil wells, tanks and boilers were for offset purposes under the Bank and Corporation Franchise Tax Act, not to be considered as taxes on personal property. This holding, we believe, should control our decision in the instant appeal insofar as taxes on oil and gas leases, wood derricks, oil wells, boiler house and warehouse are concerned.

The Appellant, in its protest against the proposed assessment of additional taxes involved in this appeal, conceded that oil leases are, under Section 3617 of the Political Code, properly considered as "real estate" but argued that a distinction' should be made between two things: First, the right under the terms of the lease to enter upon the land, bore for and extract oil and gas; and, second, the actual oil and gas produced.

It was further argued that the taxes on its oil and gas

leases were, in fact, taxes on oil and gas being produced rather than on the right to enter on land, bore for and extract such oil and gas; and that it had no interest in such oil and gas which was subject to taxation until such oil and gas was produced (citing Ohio Oil Co. v. Indiana, 177 U.S. 190).

In support of the above argument the Appellant stated that the basis for the tax assessed on its oil and gas leases was the actual gross production of oil and gas from each lease and that the tax fluctuated as the amount of such oil and gas produced fluctuated.

On the basis of the above argument, the Appellant contended in its said protest that under the guise of being taxed on its oil and gas leases it was in effect being taxed on oil and gas; that said taxes should be considered personal property taxes; a that if they are not so considered then it is being discriminated against inasmuch as oil and gas constitutes its Working capital" and are as much personal property as the stock in trade of a mercantile corporation, the taxes on which may be offset as personal property taxes.

Assuming that, for taxing purposes, a distinction should be made between oil and gas and the right to enter upon land and bore for and extract such oil and gas, and also assuming that the Appellant, under the guise of being taxed on its oil and gas leases, was in fact taxed on oil and gas, we think that it can be concluded that the Appellant must have been taxed either on oil and gas before it was extracted or else on oil and gas after it was extracted.

Oil and gas before it is extracted is either included with-in the term real estate as defined in Section 3617 of the Political Code (Graciosa Oil Co. v. Santa Barbara, 155 Cal. 140) or else it is not property subject to taxation. In any event, oil and gas before it is extracted is certainly not "personal property". Hence, any taxes which might have been paid thereon, erroneously or otherwise, should not be offset against the franchise tax provided for in the Bank and Corporation Franchise Tax Act, except as real property taxes.

After oil and gas is extracted, it is possible that it should in all cases be considered as personal property (see Mohawk Oil Co. v. Hopkins, 196 Cal. 148, 152).

However, it is to be noted that Section 3628 of the Political Code provides that property shall be assessed to the "person by whom it was owned or claimed, or in whose possession or control it was, at twelve o'clock meridian on the first Monday in March". The Appellant does not claim that any of the taxes in question were on oil and gas extracted and owned or claimed by it or in its possession or under its control on the first Monday in March, 1930.

Hence, the Appellant must be considered as contending that it was assessed for, and paid, taxes on gas and oil extracted by it but not owned or claimed by it and not in its possession

or under its control on the first Monday in March, 1930. We hesitate to uphold the Appellant in this contention. To do so, would result in our holding that the local assessor had improperly performed his duties. We are of the opinion that we should presume, at least in the absence of clear and convincing proof to the contrary, that officials have regularly performed their duties in accordance with law.

We do not believe that the fact that the basis for assessing the taxes on the oil and gas leases of the Appellant was the gross production of oil and gas from each of such leases, *or* the fact that such taxes fluctuated from year to year as the production of oil and gas fluctuated, necessarily compels the conclusion that the Appellant was, under the guise of being taxed on its oil and gas leases, in fact being taxed on oil and gas produced and disposed of by it prior to the first Monday in March of 1930. It is quite possible that it is permissible to consider the amount of oil and gas produced under a lease in determining the value of the lease,

But even if we should agree with Appelant and hold that it was in fact assessed on oil and gas extracted by it but which was not owned or claimed by it and was not in its possession or under its control on the first Monday in March of 1930, we are of the opinion that the Appellant's remedy was not to pay such taxes and claim an offset for the same from its franchise tax but rather its'remedy was either to pay such taxes under protest in accordance with Section 3819 of the Political Code, or else to bring an action for a refund of such taxes in accordance with Section 3804 of the Political Code.

If we had held that the Appellant was, in fact, taxed on oil and gas extracted by it, and further had held that such taxes were not properly allowed as a deduction from its franchise tax under the terms of the Bank and Corporation Franchise Tax Act, then it would have been pertinent for us to consider the Appellant% claim that it was being discriminated against. But since we cannot uphold Appellant in its contention that any of the taxes in question were taxes on oil and gas which had been extracted, it is not necessary and it would not be of value in this appeal for us to consider whether the Act discriminates against the Appellant.

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 the Franchise Tax Commissioner in overruling the protest of Rex Oil Company, a corporation, against a proposed assessment of an additional tax in the amount of $1,956.15, based upon the return of said corporation for the year ended December 31, 1930, under Chapter 13, Statutes of 1929, be and the same is hereby sustained.

Appeal of Rex Oil Company

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

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

ATTEST: Dixwell L. Pierce, Secretary