

BEFORE THE STATE BOARD OF EQUALIZATION



OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
THE HANCOCK OIL COMPANY)
OF CALIFORNIA)

Appearances:

For Appellant: William H. Cree and John W. Brooks,
Attorneys; G. P. Deane, Treasurer
For Respondent: Frank L. Gueren; Attorney, on behalf of
Albert A. Manship, Franchise Tax Commissioner

O _ P _ I _ N _ I _ O _ N

This is an appeal pursuant to Section 25 of the California Bank and Corporation Franchise Tax Act (Statutes of 1929, Chapter 13, as amended), from the action of the Franchise Tax Commissioner in overruling the protest of The Hancock Oil Company of California, a corporation, against a proposed assessment of additional tax in the amount of \$6,515.61, with interest

There is no dispute as to the facts occasioning this appeal. Hancock Oil Company, a corporation organized under the laws of Delaware and qualified to do business in this State, pursuant to a plan of reorganization, transferred all of its assets to the Appellant, The Hancock Oil Company of California, a corporation also organized under the laws of Delaware and qualified to do business in this State., The transfer was effected on August 31, 1929. Thereupon, Hancock Oil Company ceased doing business in this State and was formally dissolved on November 13, 1929. Hancock Oil Company filed a return for the fiscal year ended July 31, 1929, disclosing a net income in the amount of \$267,069.33 for said year. Subsequent to the filing of this return, dispute arose between the company and the Commissioner over the proper tax liability of said company based on this return.

On appeal duly presented to this Board, we held that Hancock Oil Company should be taxed, on the basis of the above return, only for the period from July 31, 1929 to August 31, 1929, when it ceased "doing business" rather than from July 31, 1929 to November 13, 1929, when it was formally dissolved. In thus holding, we were influenced by the consideration that The Hancock Oil Company of California took over the business of Hancock Oil Company on August 31, 1929 and continued operating that business for the privilege of doing which it would be taxed under the Act.

To have held that Hancock Oil Company should have been taxed for the privilege of operating the same business during the period from August 31, 1929 to November 13, 1929, although

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it did not exercise that privilege, would have resulted, certainly, in a practical injustice. Although not so in form, nevertheless, in effect the result would have been to impose a burden of double taxation on the above business for a period of approximately two and one half months.

The Appellant, The Hancock Oil Company of California, succeeded to the business of Hancock Oil Company on August 31, 1929, as above noted and on September 1, 1929, commenced doing business in this State for the first time. In due course, it filed a return for the taxable period from September 1, 1929 to June 30, 1930, disclosing a net income for said period in the amount of \$38,570.33.

Section 13 of the Act as it read prior to its amendment in 1931 provided that:

"A corporation which commences to do business in this State, after the effective date of this act, shall thereupon prepay the minimum tax hereunder, and upon filing of its return within two months and fifteen days after the close of its taxable year, its tax for that year shall be adjusted upon the basis of the net income received during that taxable year."

If the Appellant should be regarded as a corporation commencing business in this State within the terms of the above quoted provision, its tax for the taxable period from September 1, 1929 to June 30, 1930, computed under said provisions on the basis of its net income for said period, i.e., \$38,570.33; and after allowing for offset, would amount to \$431.98. This, together with the sum of \$571.08, the amount of the tax on Hancock Oil Company for the privilege of exercising its corporate franchise in the state for the period from July 31, 1929 to August 31, 1929 results in a total tax liability of the two corporations for the period from July 31, 1929 to June 30, 1930, of but \$1,003.06.

If Hancock Oil Company had not ceased doing business in the state on August 31, 1929, but had continued doing business throughout the entire period from July 31, 1929 to June 30, 1930, its tax for said period would have been measured in accordance with Section 4 of the Act by its net income in the amount of \$267,069.33 for the taxable period ended July 31, 1929 and as so measured, after allowing for offset, would have amounted to well over six thousand dollars.

Apparently influenced by the consideration that, although operated by two corporate structures, there was in fact but one single and continuing business operated by Hancock Oil Company and The Hancock Oil Company of California, during the period from July 31, 1929 to June 30, 1930, and, also, apparently acting under the belief that the above set out facts revealed an attempt to evade taxation, the Commissioner, instead of computing the tax of The Hancock Oil Company of California

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for the period ended June 30, 1930.

It is true that the business of Hancock Oil Company was succeeded to and operated by The **Hancock** Oil Company of California. It is also true, apparently, that the latter company owned all the stock of the former company, and greatly resembled the former company even to the extent of a close similarity in name. But it is to be noted that the tax imposed by the Act is not a tax on a business but is a tax on banks and certain corporations for the privilege of exercising their corporate franchises in this State (Section 4).

The provisions of Section 13 of the Act, above quoted, plainly contemplate that a corporation commencing to do business in this State shall pay a tax for the privilege of exercising **its corporate** franchise during its first taxable period measured by **its** net income during such period.

The imposition of a tax on the Appellant, The Hancock Oil Company of California, for the period ended June 30, 1930, **accord**ing to or measured by, in any extent, the income of the predecessor company, Hancock Oil Company, for the period ended July 31, 1929, can be justified only on the theory that the corporate existence of the Appellant should be disregarded.

It requires no citation of authority in support of the proposition that a corporation is to be regarded as an entity separate and distinct from all other entities. Only in unusual exigencies, such as the prevention of tax evasion, may the **corpo**-rate veil be swept aside or the corporate existence disregarded.

Insofar as we are aware, the corporate reorganization above described was effected for legitimate commercial purposes. There has been no evidence adduced, nor have we been able to discover any upon which could be predicated the conclusion that the reorganization in question was for the purpose of evading taxes. The mere fact that through such a reorganization taxes due the state are decreased in amount is not in itself sufficient to support any such **conclusion**. It is quite conceivable that **pursu**-ant to a reorganization similar to that herein involved, the taxes due the state might be increased rather than decreased. In fact, such would have occurred as a result of the reorganization under consideration had the net income of the successor corporation during the period from September 1, 1929 to June 30, 1930, exceeded the net income of the predecessor corporation for the period ended July 31, 1929. The fact that the income of the **predecessor** corporation for its last taxable year, exceeded the **income** of the successor corporation for its first taxable year is to be regarded, we believe, as a fortuitous event.

It may seem strange that the amount of the taxes due the state measured by the income from a particular business should be affected in any way as a result of a change in **the** corporate structure by which such business is operated. The Act, however, contains no special provision for the adjustment or corporation of the tax in the event of a corporate reorganization. In the

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absence of such a provision, and in the absence of evidence of an attempt to evade taxation, we **feel** compelled to conclude that the Appellant, The Hancock Oil Company of California, should be regarded as a **corporate entity separate and distinct** from Hancock Oil Company, and consequently, the tax on the Appellant for the taxable period ended June 30, 1930, should be computed, in accordance with the provisions of **Section 13** of the Act, above quoted, solely on the basis of the net income of the Appellant for the period **from** September 1, 1929 to June 30, 1930.

W 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 Hancock Oil Company of California**, a corporation, against a proposed assessment of **additional tax** in the amount of **\$6,515.61** for the taxable period ended June 30, 1930, be and the same is hereby reversed. Said ruling is hereby set aside and the Franchise Tax Commissioner is further directed to compute the tax liability of said corporation for said period in conformity with the foregoing opinion of this Board.

Done at Sacramento, California, this 11th day of May, 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