

BEFORE THE STATE BOARD OF EQUALIZATION



OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
CROWN REALTY COMPANY )

Appearances:

For Appellant: Jacobs, Blanckenburg & May, Attorneys

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

O P I N I O N

This is an appeal pursuant to Section 25 of **the Bank and Corporation Franchise Tax Act** (Chap. 13, Stats. 1929, as amended, from the action of the Franchise Tax Commissioner in overruling the protest of Crown Realty Company, a corporation, to a proposed assessment of an additional tax in the amount of \$187.42 based *on* its return for the year ended December 31, 1932.

It appears that the additional assessment in question resulted from the action of the Commissioner in computing the tax liability of the Appellant, based upon its return for the year ended December 31, 1932, under the Act as amended by the Legislature in 1933 rather than under the Act as it read **prior** to the 1933 amendments. In its appeal, Appellant contends that the Commissioner acted erroneously *in so* doing.

It appears that the bills making the amendments to the **Act** in 1933 contained provisions to the effect that the amendments should be applied in the computation of taxes accruing subsequent to December 31, 1932. Section 4 of the Act provides that the taxes imposed by the Act shall accrue on the first day after the close of the taxable year. By Section 11 of the Act, the term "taxable year" is defined as meaning **"the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the net income is computed herein."**

In view of these provisions, it is clear that the tax **on** the basis of Appellant's return for the year ended December 31, 1932 accrued subsequent to December 31, 1932, and accordingly, the 1933 amendments should be applied in computing the tax.

Appellant further contends that the notice of the additional franchise tax proposed to be assessed was erroneous, and that consequently the proposed assessment is invalid. That portion **of** the notice to which Appellant takes exception reads as follows

**"Bank and Corporation Franchise Tax returns for the year ended December 31, 1932, disclosing tax liability for the taxable year ended**

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December 31, 1933, as transmitted by the above corporation has **been** examined and the correct amount of tax determined by the Commissioner, and it is proposed to **assess an** additional tax in the amount of **\$187.42.**"

Appellant contends that in view of the definition of the term "**taxable year**" set forth above, the return for the year ended December 31, 1932 did not disclose tax liability for the taxable year ended December 31, 1933 but rather disclosed tax liability for the taxable year ended December 31, 1932.

The Appellant, however, has overlooked the provision of Section 4 of the Act to the effect that the corporations taxable under the Act shall annually pay a tax for the privilege of **doing** business in this State according to or measured by their net **income** for the next preceding fiscal or calendar year. Under this provision, it is clear that the net income for one year is not the measure of the tax for that year but rather is the measure of the tax for the succeeding year. Thus, the Appellant's, **return** for the year ended December 31, 1932 did not disclose its tax liability-for that year'but did, as the notice states, **disclose** its liability for the succeeding year, the year ended December 31, 1933.

Appellant also raises a question regarding interest on the proposed additional assessment by contending that interest should not accrue until after the validity of the proposed assessment is determined and demand made for payment thereof.

Section. 24(a) of the Act provides that

"Interest upon the amount **determined** as a deficiency under the provisions of section 25 of this act shall be assessed at the same time as the deficiency, shall be paid upon notice and demand **from the** commissioner, and **shall be** collected as a part of the tax, at the rate of six per centum per annum from the date prescribed for the payment of the tax (or, if the tax is paid in installments, from the date prescribed for the payment of the first installment) to the date the deficiency is assessed."

Appellant contends that inasmuch as the proposed assessment resulted from a change in the law occurring after its return was filed, the assessment is not a deficiency within the meaning of Section 25 of the **Act**, and that consequently Section 24(a) is inapplicable.

But it is to be noted that if the proposed additional assessment is not a deficiency within the meaning of Section 25 then we have no jurisdiction over the matter since we can entertain appeals only from the action of the Franchise Tax Commission with respect to deficiencies proposed under Section.25 of the Act and with respect to claims for refund. Furthermore, if the proposed assessment is not a deficiency within the meaning of **Sectio**

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25, it necessarily follows that Appellant is delinquent in paying its tax liability under the Act and that the amount of delinquency should bear interest at the rate of one per cent per month or twelve per cent per annum in accordance with Section 24(c) of the Act rather than at the rate of six per cent per annum as provided in Section 24(a).

In view of these circumstances, we will not further consider the question whether the proposed additional assessment is a deficiency within the meaning of Section 25 of the Act since a determination that it is not a deficiency would not permit us to give the Appellant any relief.

O P I N I O N

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 Charles J. McColgan, Franchise Tax Commissioner, in overruling the protest of Crown Realty Company, a corporation, against a proposed assessment of an additional tax in the amount of \$18'7.42 based upon the return of said corporation for the year ended December 31, 1932, pursuant to Chapter 13, Statutes of 1929, as amended, be and the same is hereby sustained.

Done at Sacramento, California, this 21st day of May, 1932, by the State Board of Equalization.

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

ATTEST: Dixwell L. Pierce, Secretary