



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
WILSHIRE ANNEX OIL COMPANY)

Appearances:

For Appellant: R. E. Eakes, controller of appellant corpo-
ration; R. C. Shibe, Tax Auditor
For Respondent: Chas. J. McColgan, Franchise Tax Commissionere

O P I N I O N

This is an appeal pursuant to Section 25 of the Bank and Corporation Franchise Tax Act (Chapter 13, Stats, 1929, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of Wilshire Annex Oil Company to a proposed assessment of an additional tax in the amount of \$812.12 for the year 1931, based upon its return for the year ended December 31, 1930.

The Appellant concedes that \$711.89 of the additional tax proposed by the Commissioner is correct. The difference of \$100.23 is the amount involved in this appeal. This amount of additional tax was proposed by the Commissioner due to his classifying certain taxes paid locally upon derrick and well equipment, tanks, pipe lines, and a building, as real estate taxes rather than as personal property taxes, and hence under Section 4 of the Act, allowing only 10 per cent rather than 100 per cent of the amount of the taxes as offset from Appellant's franchise tax.

In the Appeal of Catalina View Oil Company (decided by this Board on the 20th day of April, 1932, we held that taxes paid locally on mineral rights, derricks, engines, oil wells, tanks and boilers were properly to be considered as taxes paid on real estate as that term is defined in Section 3617 of the Political Code, and hence that only 10 per cent of the amount of said taxes could be offset for franchise tax purposes. This decision we think controls our decision in the instant appeal insofar as the appeal relates to taxes paid locally on the derrick and well equipment, tanks and building. The only matter then remaining for us to decide is whether the taxes paid on the pipe lines should be considered as taxes paid on real property or whether they should be considered as taxes paid on personal property.

It is to be noted that the pipe lines in question were partly underground and partly above ground, but the portion of the lines which are above ground are connected with the portions beneath the surface. In our opinion, these lines must be

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held to be real estate as that term is defined in Section 3617 of the Political Code. That section defines real estate as including improvements. The term "improvements" is defined as including fixtures. In Pasadena v. Los Angeles County, 182 Cal. 171, it was held that the term "**fixtures**" as used in Section 3617 of the Political Code is to be construed in accordance with the definition of the term contained in Section 660 of the Civil Code. The definition of the term "**fixtures**" given in Section 660 of the Civil Code is as follows, insofar as it is relevant:

"A thing is deemed to be affixed to land when it is attached to it by roots, as in the case of trees, vines or shrubs; or imbedded in it, as in the case of walls; or permanently resting upon it as in the case of buildings; or permanently attached to what **is thus** permanent, as by means of cement, plaster, nails, bolts or **screws.**"

In the case above referred to it was held that underground pipe lines were to be considered fixtures within the definition of that term given in the above quoted provision of Section 660 of the Civil Code. Consequently, it follows that underground pipe lines must be considered as included in the term "**improvements**" and hence included in the term "**real estate**" as defined in Section 3617 of the Political Code.

Inasmuch as the portions of the pipe lines involved in the instant appeal which are above the surface are connected with the portions beneath the surface, it follows that the entire lines must be considered as being fixtures and consequently within the definition of the term "**real estate**" as given in Section 3617 of the Political Code. In this connection, we might refer to the case of California Domestic Water Co, v. Los Angeles County, 10 Cal. App, 185, wherein it was held that pipe lines, flumes, conduits, et cetera, are to be considered as real estate.

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 Chas. J. **McColgan** Franchise Tax Commissioner, in overruling the protest of Wilshire Annex Oil Company, against a proposed assessment of additional taxes under **Chapter 13**, Statutes of 1929, as amended, **be** and the same is hereby sustained.

Done at Sacramento, California, this 10th day of October, 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
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