

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA



In the Matter of **the Appeal** of)
POPE ESTATE CO.)

For Appellant: Geo. E. H. **Satchell**, Certified
Public Accountant

For ~~Respondent~~: Hon. Chas. J. **McColgan**, Franchise
Tax Commissioner

O P I N I O N

This is an appeal pursuant to 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 the protest of Pope Estate Co. to a proposed assessment of an additional tax in the amount of \$165.51 for the year 1930 based on its return for the period ended December 31, 1929.

There are two problems involved in this appeal: (1) **Whether** the Commissioner acted properly in including interest from bonds and instrumentalities of the United States in computing the income by which the tax was measured; and (2) whether the Commissioner acted properly in including dividends received from national banks located outside the state in the income by which the tax was measured.

In the appeal of Homestake Mining Company **decided** by us on May 11, 1932, we held that the Act contemplated the inclusion of interest from federal, state and municipal bonds in the computation of the income by which the tax imposed by the Act is to be measured, although said bonds, and interest therefrom, are exempt from taxation. Further, we held that such inclusion was constitutional for the reason that the tax imposed by the Act is not an income tax but an excise tax, and consequently tax exempt income could be included in the measure of the tax.

In thus holding, we relied upon the cases of Flint v. Stone Tracy Co., 220 U.S. 601, Educational Films Corporation v. Ward, 282 U.S. 379, and Pacific Company, Ltd., vs. Johnson, 76 L. Ed. 555. In the last cited case, the inclusion of interest from tax exempt improvement district bonds in the computation of the income by which the tax provided in the Act is to be measured, was held valid.

We are of the opinion that our decision in the above appeal should be regarded as controlling our decision with respect to the first problem involved in the instant appeal.

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The second problem involved in this appeal, i.e. whether dividends received from a national bank located outside the state might properly be included in the income by which the tax provided in the Act is to be measured, was passed upon by us in the appeal of Howard Automobile Company (Decided by this Board on May 15, 1931). We there held that the Act contemplated that such dividends should be included, and that there was nothing in Section 5219 of the Revised Statutes of the United States, which prescribes the conditions under which states may tax national banks, prohibiting the inclusion of such dividends. It is to be noted that the appellant in the instant appeal makes an argument similar to the argument made by the appellant in the appeal above referred to. Briefly, this argument consists of omitting some of the important and relevant provisions of Section 5219, and then concluding that Section 5219 prohibits a state from including dividends from national banks located outside the state in the measure of a tax on corporations unless the state also imposes a tax on the net income of individuals. This argument was considered in detail in the opinion rendered in the above mentioned appeal, and the error of the argument clearly disclosed. For this reason, we will not at this time give further consideration to the argument.

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 Pope Estate Co. against proposed assessment of additional taxes in the amount of \$165.51 based upon the return of said corporation for the year ended December 31, 1929, under Chapter 13, Statutes of 1929, as amended, be and the same is hereby sustained.

Done at Sacramento, California, this 12th day of October, 1932, by the State Board of Equalization.

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

Attest: Dixwell L. Pierce, Secretary