



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the **Matter** of the Appeal of)
ITALIAN VINEYARD ASSOCIATES)
and)
VINEYARD STOCKHOLDING COMPANY)

Appearances:

For Appellants: Mr. Ralph W. Smith, Attorney at law

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

O P I N I O N

These are appeals pursuant to section 25 of the Bank and Corporation Franchise Tax Act (Stats. 1929, Chapter 13, as amended) from the action of the Franchise Tax Commissioner in overruling the protests of Italian Vineyard Associates and Vineyard Stockholding Company, corporations, to proposed assessments of additional taxes for the year 1931, based on their returns for the year ended December 31, 1930. The amount of the additional taxes proposed to be assessed to the above corporations are as follows: Italian Vineyard Associates, \$441.51; Vineyard Stockholding Company, \$429.43.

Inasmuch as similar problems are involved in each of the above appeals, and inasmuch as the appellants were represented by the same counsel, we have considered the proceedings as a consolidated appeal.

It appears that appellants are both California corporations and engage in no other activity than the holding of stock in the Italian Vineyard Company, a corporation doing business both within and without the state. In computing appellant's franchise tax liability under the Act for the year 1931 based on their returns for the year ended December 31, 1930, the Commissioner, in accordance with Section 8(h) of the Act, considered only that percentage of the dividends received by them during the year 1930 which was declared out of earnings of Italian Vineyard Company derived from business done outside" of the state. Inasmuch as Italian Vineyard Company has operated at a loss since June 30, 1928, the percentage of dividends declared out of earnings from business done outside the state was determined on the basis of the return of Italian Vineyard Company covering the fiscal year ended June 30, 1928.

The appellants contend, first, that engaging in the holding of stock does not constitute doing business and that consequently they are not subject either to the minimum tax or any other tax provided for in the Act since the Act purports

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to apply only to corporations "doing business" in this state; second, that dividends declared out of income derived from business done outside this state cannot be included in net income to be used as a measure of a franchise tax imposed by this state; and, third, that Italian Vineyard Company, in its franchise tax return covering the period ended June 30, 1928, incorrectly reported that 49% of its income was derived from business done outside this state, whereas only 10% of its income was so derived, and that, consequently, the Commissioner's determination of the percentage of dividends received by appellant which were declared out of income from business done outside this state was erroneous inasmuch as such determination was based upon the above mentioned return of Italian Vineyard Company.

The first two points urged upon us were ruled upon adversely to appellant in the appeal of Union Oil Associates (decided by this Board on October 10, 1932) and consequently need not be further considered here. With respect to the third point, it should be noted that the return of Italian Vineyard Company for the period ended June 30, 1928, erroneous though it may have been, was accepted by the Commissioner as correct, and served as the basis upon which the franchise tax liability of Italian Vineyard Company for the first six months of 1929 was computed. Due to the expiration of the statute of limitations for proposing assessments of additional taxes, the Commissioner is no longer in a position to reconsider that computation.

Hence, insofar as the Italian Vineyard Company is concerned, the question of the correctness of its return must be regarded as closed. We believe that consistency as well as finality in the application of tax laws require that a stockholder of Italian Vineyard Company not be permitted to reopen that question for consideration.

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 Hon. Chas. J. **McColgan**, Franchise Tax Commissioner, in overruling the protests of Italian Vineyard Associates and Vineyard Stockholding Company against proposed assessments of additional taxes for the year 1931 based upon the returns of the above corporations for the year ended December 31, 1930, be and the same is hereby sustained.

Done at Sacramento, California, this 17th day of February 1933, by the State Board of Equalization.

Attest:
Dixwell L. Pierce,
Secretary

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