



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
WELCH HOLDING CO. }

Appearances:

For Appellant: H. M. Briggs, Secretary; Frank S. Baillie,
Vice-president of Appellant Corporation
For Respondent: 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 (Chapter 13, Statutes 1929, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of Welch Holding Co., a corporation, to a proposed assessment of an additional tax in the amount of \$103.80 based upon the return of the above corporation for the taxable year ended December 31, 1931.

From the evidence adduced at an oral hearing duly held before this Board in the instant appeal, it appears that during the year 1927, Welch and Bailee purchased an undertaking business from a Mr. Utter. Subsequently a corporation was organized to take over the business so purchased, and ninety shares of the corporation's stock was sold to a Mr. Huston for \$9,000. Mr. Utter, from whom the business was purchased, and Mr. Huston were both employed in connection with the business. During the year 1931 it apparently became desirable that Mr. Huston sever his connections with the business. Accordingly, the Appellant made arrangements with Huston for the purchase of his stock for \$11,595.02. Shortly thereafter, the stock so purchased was sold to Utter for \$9,000 or \$2,595.02 less than the amount for which it was purchased from Huston.

In its return for the year ended December 31, 1931, Appellant deducted the difference between the purchase and sale price of the stock as a loss. The Commissioner disallowed this deduction and proposed the additional assessment in question.

Although Section 19 of the Act provides that in the case of property acquired after January 1, 1928, the basis for determining gain or loss from the sale or other disposition of the property shall be the cost thereof, we are of the opinion that Appellant did not sustain a deductible loss in the purchase and sale of Huston's stock. Apparently the sole purpose of the transaction between Appellant, Huston and Utter was to oust Huston from any interest in, or connection with, the business purchased from Utter, by effecting a transfer of his stock to Utter. This purpose might as well have been effected by Utter'

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purchasing the stock directly from Huston without injecting Appellant into the transaction. Furthermore, it does not appear that the value of the stock fluctuated between the time it was purchased from Huston and the time it was sold to Utter. Inasmuch as the stock was sold to Utter for the same amount as it was originally issued to Huston, we think it a fair inference that Appellant deliberately paid Huston \$2,595.02 more than the stock was actually worth. This amount, we think, should be regarded not as a loss, but as a gift to Huston or as the "price of severing Huston's connection with the business purchased from Utter.

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 the Franchise Tax Commissioner in overruling the protest of Welch Holding Co., a corporation, against a proposed assessment of an additional tax of \$103.80 under Chapter 13, Statutes of 1929, as amended, based upon the net income of said corporation for the year ended December 31, 1931, be and the same is hereby sustained,

Done at Sacramento, California, this 5th day of June, 1933, by the State Board of Equalization.

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

ATT EST : Dixwell L. Pierce; Secretary

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