BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
ANDERSON BARNGROVER RANCH CO.)

Appearances:

For Appellant: Howard P. Witten, Attorney at Law; C. C. Anderson, Secretary 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 (Statutes of 1929, Chapter 13, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of Anderson Barngrover Ranch Co., a corporation, to a proposed assessment of an additional tax in the amount of $114.24, based upon the return of the above corporation for the fiscal year ended November 31, 1931.

There are two problems involved in this appeal, namely, whether for offset purposes under the Act, local taxes "accrued," or only such taxes as are actually "paid" during the taxable year may be considered, and whether an item designated by the Appellant as "Linden Irrigation District taxes" may be applied as an offset against the tax imposed by the Act.

It appears that Appellant keeps its books of account on an accrual basis, and has adopted the practice of carrying forward as a prepaid expense a portion of the taxes paid during the preceding year. Appellant contends that all the taxes so carried forward on its books into the fiscal year ended November 31, 1931, should be allowed as an offset against the tax imposed under the Act based upon its return for the above fiscal year. It should be noted, however, that the provisions of the Act, Sections 4 and 26, which provide for the offsetting of certain taxes against the tax imposed thereunder refer only to taxes "paid" during the taxable year. Hence, it would seem that, unless a different result is required by other provisions of the Act, taxes not actually paid during a taxable year, even though accrued during the year, cannot be offset against the tax imposed under the Act based upon the return for that taxable year.

In support of reaching a different result, Appellant calls our attention to the provisions of Section 11a of the Act defining the term "taxable year." We are unable to perceive how this definition is in any wise relevant to the matter under consideration. Appellant also calls our attention to the definition, of the terms "paid or incurred" and "paid or accrued" set forth in Section 11c of the Act. Inasmuch as neither of these terms is employed in the provisions of the Act relating to offsets,

it would seem that the definitions of these terms are likewise irrelevant to a proper construction of the offset provisions. Consequently, we conclude that Appellant is not entitled to offset taxes carried forward on its books into the fiscal year ended November 30, 1931, against its franchise tax based upon its return for that fiscal year.

The item designated "Linden Irrigation District taxes" represents payments by Appellant to the Linden Irrigation District pursuant to a levy by the district upon all the real property within the district. This item was disallowed by the Commissioner as an offset against Appellant's franchise tax on the grounds that it should be regarded as a special assessment and not a tax, whereas the Act provides for an offset only for "taxes" paid locally upon real or personal property.

It should be noted that a well defined distinction exists between taxes and special assessments. Taxes, both general and special, are levied at a uniform rate upon all the property, both real and personal, within the taxing jurisdiction. Special assessments, on the other hand, are levied only upon real property, and, although they may be at a uniform rate, the rate generally varies inasmuch as they are supposed to be proportiona to benefits received. Furthermore, it has been repeatedly held that provisions of the constitution and the statutes relating to taxes have no application to special assessments (Turlock Irriga District v. Williams, 76 Cal. 360; Emery v. San Francisco Gas Co 28 Cal. 345; San Diego v. Linda Vista Irrigation District, 108 Cal. 189).

In view of the foregoing, it seems clear that the item in question must be regarded as a special assessment and not a tax within the meaning of the offset provisions of the Act inasmuch as it represents a payment pursuant to a levy imposed only upon real property and not upon all taxable property within the Linden Irrigation District. Consequently, it would seem that the item was properly disallowed as an offset against Appellant': franchise tax.

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 Anderson Barngrover Ranch Co., a corporation, against a proposed assessment of an additional tax in the amount of $114.84, based upon the net income of said corporation for the fiscal year ended November 31, 1931, be and the same is hereby sustained.

Done at Sacramento, California, this 9th day of June, 1933, 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