



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
WILSHIRE OIL COMPANY, INC.) (Appearances not shown
on original opinion)

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 Wilshire Oil Company, Inc. to a proposed assessment of an additional tax in the amount of \$573.81 based upon the return of the above corporation for the taxable year ended December 31, 1929.

It appears that the proposal of the above additional assessment was occasioned by the Commissioner's action in disallowing as an offset against Appellant's franchise tax, payments made by the Appellant pursuant to an Irrigation District assessment and an Oil Protection Fund assessment. These items were disallowed by the Commissioner on the grounds that they constituted special assessments rather than taxes within the meaning of the offset provisions of the Act.

Appellant concedes that the above items were properly disallowed for offset purposes by the Commissioner but contends that due to an erroneous computation of depletion allowance on its oil property on the basis of 27½ per cent of the gross income from the property rather than on the basis of the January 1, 1928, valuation of the property, it has already overpaid its franchise tax measured by its 1929 income, and consequently, that not only is there no additional tax due, but that it is entitled to a refund.

It should be noted that subsequent to the filing of the instant appeal, Appellant has instituted suit against the State Treasurer to recover the amount of tax allegedly overpaid by it on account of erroneous computation of its depletion allowance. This action of Appellant, we think, clearly deprives us of jurisdiction, if we had jurisdiction, to determine whether Appellant has made an overpayment of its franchise tax based upon its 1929 return. For us to pass upon an issue which is properly before the courts for consideration, would not only be **presumptuous but** would also lead to confusion. It is conceivable that the courts might reach one conclusion and we might reach an entirely different conclusion, with the result that a chaotic situation would exist.

In our opinion a determination by us on the question of overpayment will not in any way further protect Appellant's interests. If in the suit instituted by Appellant against the State Treasurer to recover the amount allegedly overpaid by it,

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judgment is rendered for Appellant, the amount of the judgment can first be credited on the additional assessment proposed by the Commissioner and the balance refunded to Appellant. As a result, Appellant's tax liability on account of its 1929 return will be satisfied exactly. If, on the other hand, judgment is rendered adversely by the Appellant, an amount equal to the additional assessment proposed by the Commissioner will have to be paid by Appellant if its tax liability based on its 1929 return is to be fully satisfied. In neither event will Appellant be required to pay an amount in excess of the amount properly due from it.

OR 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 the Wilshire Oil Company, Inc., a corporation, against a proposed assessment of an additional tax in the amount of \$573.81, based upon the net income of said corporation for the period ended December 31, 1930, be and the same is hereby sustained.

Done at Sacramento, California, this 20th 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