

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA



In the Matter of the Appeal of }
H. H. Z. ESTATE COMPANY }

Appearances:

For Appellant: Theodore L. Breslauer, Attorney

For Respondent: Chas. J. McColgan, Franchise Tax Commissione

O P I N I O N

This is an appeal pursuant to Section 25 of the Bank and Corporation Franchise Tax Act (Chap. 13, Stats. §929, as amended) from the action of the Franchise Tax Commissioner, in overruling the protest of H. H. Z. Estate Company, a corporation, to a proposed assessment of an additional tax in the amount of \$1,682.80 for the year 1931, based upon its return for the year ended December 31, 1930.

It appears that at all times since the effective date of the Act, Appellant's activities have been confined to the holding of stock of the Crown Zellerbach Corporation and to distributing the dividends thereon to Appellant's stockholders. The income for the year 1930 by which the proposed assessment in question was measured consisted entirely of dividends on the stock so held by it. Appellant contends that these activities do not constitute doing business and consequently it was not subject to the tax imposed by the Act inasmuch as the Act imposes a tax only on corporations doing business in this State.

A similar contention was considered by us in the Appeal of Union Oil Associates decided by us on October 10, 1932. We there held that the Union Oil Associates was to be regarded as a business corporation doing business within this State, although its activities, like Appellant's, were confined to the holding of stock of another corporation and to distributing the dividends thereon to its stockholders. The Supreme Court has recently reached a similar conclusion. (See Union Oil Associates v. Johnson, 87 Cal. Dec. 627.)

But independently of the question whether holding stock and distributing dividends thereon constitute doing business, we think Appellant was subject to the tax imposed by the Act for the privilege of doing business during the year 1931.

In 1931 Section 5 of the Act was amended to provide that "doing business" shall include the right to do business. From a reading of Appellant's articles of incorporation, it appears that regardless of whether holding stock and distributing dividends received thereon amounts to doing business, Appellant

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clearly had the right to do business. It follows that Appellant, **having the right to do business**, was doing business within the meaning of the Act during the year 1931 **and** accordingly was subject to the tax imposed by the Act for said **year**.

It may be argued that to follow the amendment to Section 5 in the computation of taxes based on 1930 income would be to give to the amendment a retroactive effect inasmuch as it did not become effective until after the close of the Year **1930**.

A similar problem has been passed on by this Board in previous appeals. Thus, in the Appeal of United States Oil and Royalties Company decided on May 10, 1932, we held that an amendment, effective February 27, 1931, to Section 8(g) of the Act, providing that depletion in the case of oil and gas wells could not be computed on the basis of January 1, **1928** values, as was previously provided, should be followed in computing taxes for the year 1931 notwithstanding the fact that said **taxes were** to be measured by income for the year 1930. In so holding, we were careful to point out that we were applying the **amendment** prospectively and not retroactively. In this connection, we expressed ourselves as follows:

"The application of the amendment to the computation of income for the year ended December 31, 1930, does not in any way affect taxes for a year prior to the effective date of the amendment. The income of Appellant for the year ended December 31, 1930, is used solely as a basis for computing Appellant's tax liability under the act for the year 1931. This tax, although it accrued, under Section 4 of the act, prior to the time the amendment in question became effective, is nevertheless a tax on Appellant for the privilege of exercising its corporate franchise throughout the year 1931, the current year as of the time the amendment became effective. We are unable to perceive why a change in the method of computing a tax should be considered retroactive because the change is applied to the computation of the tax for the year in which the change became effective,"

Again in the Appeal of Corporation of America, decided by us on May 12, 1932, we held that an amendment to Section 13 of the Act, which became **effective** on February 27, 1931, relating to the computation of taxes of commencing corporations should be applied in computing taxes for the year **1931**. In the course of our opinion, we quoted the following statement of Roger J. Traynor, Associate Professor of Law, University of California, appearing at page 739 of the 1932 edition of Ballantine's California Corporation Laws:

"The tax imposed in 1931 is not a **retroactive tax** but a tax for the current taxable ~~year~~ **year**. It is difficult to see on what basis a taxpayer can claim that, regardless of legislative action,

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current taxes must be figured on the same basis on which past taxes have been assessed, or in fact on what grounds he can complain if the rates of current taxes were increased or if, indeed, additional taxes were imposed during the same year on the same subject."

In view of the above, we think it is clear that the amendment to Section 5 was applicable to the computation of taxes for the year 1931, based upon income for the year ended December 31, 1930, and that as so applied the amendment did not have a retroactive effect.

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 Charles J. **McColgan**, Franchise Tax Commissioner, in overruling the protest of H. H. Z. Estate Company, a corporation, against a proposed assessment of **an additional** tax in the amount of **\$1,682.80** for the year 1931, based upon the return of said corporation for the year ended December 31, 1930, pursuant to Chapter 13, Statutes of **1929**, as amended, be and the same is hereby sustained,

Done at Sacramento, California, this 17th day of May, 1934, 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