



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
WESTERN STATES GASOLINE CORPORATION)

Appearances:

For Appellant: G. C. O'Connell, Attorney

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

O P I N I O N

This is an appeal pursuant to Section 27 of the Bank and Corporation Franchise Tax Act (Ch. 13, Stats. of 1929, as amended by Ch. 210, Stats. of 1933) from the action of the Franchise Tax Commissioner in denying the claim of Western States Gasoline Corporation for a refund of an alleged overpayment of tax in the amount of \$4,543.22 for the fiscal year which began October 1, 1932 and ended September 30, 1933.

In computing its tax for the fiscal year which began October 1, 1932 and ended September 30, 1933, measured by its income for the preceding fiscal year, Appellant followed the provisions of the Act as they read in 1932. As so computed, the tax for said year amounted to \$16,316.87.

Subsequent to the filing of Appellant's return disclosing tax liability in the above amount, the Legislature substantially amended the Act by the passage of bills which became effective during May 1933. (See Stats. 1933, Chs. 209, 210 and 303).

One of the amendments so enacted by the Legislature added the following provisions to Section 4 of the Act:

"The tax on any bank or corporation for a period beginning in one calendar year (hereinafter in this section called 'first calendar year*') and ending in the following calendar year (Hereinafter in this section called 'second calendar year') where the law applicable to the computation of taxes for calendar year banks or corporations for the second calendar year is different from the law applicable to computation oftaxesfor calendar year banks or corporations for the first calendar year, shall be the sum of (1) the same proportion of a tax for the entire period, determined under the law applicable to the first calendar year and at the rates for such year, which the portion of such period falling within the first year is of the entire period, determined under the law applicable to the second calendar year and at the rates for such year, which the portion of such period falling within the second calendar year is of the entire period.

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"Any tax that has been paid under the law applicable to the first calendar year if in excess of the tax imposed by this section shall be refunded or credited to the bank or corporation ^{as provided} in section 27. Any tax in addition to that ^{paid} under the law applicable to the first calendar year made necessary by this section shall be immediately due and payable upon notice and demand from the commissioner."

Believing that the above provisions were applicable to the computation of its tax for the fiscal year which began October 1, 1932 and ended September 31, 1933, the Appellant, before paying the second installment thereof, filed an amended return in which it recomputed the tax in accordance with the above provisions. As recomputed, the tax, due to a reduction in the rate from four to two per cent and to other changes, amounted to ~~\$12,279.70~~ or ~~\$4,037.17~~ less than ^{as} originally computed. In making payment of the second installment the Appellant paid only the difference between the first installment and the tax as recomputed, rather than the difference between the first installment and the tax as originally computed.

The Commissioner took the position that the amendment to Section 4 of the Act, set forth above, was inapplicable to the tax in question and demanded payment of the full amount of the tax as originally computed together with penalties on the amount thereof unpaid. Pursuant to this demand, Appellant paid under protest the sum of ~~\$4,543.22~~, and thereafter filed with the Commissioner a claim for refund of the amount so paid. Upon the claim being denied by the Commissioner the taxpayer appealed to this Board.

Reference to the above quoted provisions of Section 4 disclose that they provide that where the law applicable to calendar year corporations, for one calendar year, is different from the law applicable to calendar year corporations for the second calendar year, the taxes for fiscal year corporations, whose fiscal years are partly within both such calendar years, shall be computed partly under the old law and partly under the new law in the proportion which the number of months in each of the two calendar years bears to the entire fiscal year which falls partly in both of such calendar years. Some adjustment, such as that contemplated by these provisions, is necessary if changes in the law are to apply equally to both fiscal and calendar year corporations. Without such an adjustment changes would be applicable to fiscal year corporations either at ^{an} earlier or later date than to **calendar** year corporations.

The question presented by this appeal is whether the above provisions were applicable to the computation of the tax of a fiscal year corporation for a fiscal year beginning in the latter part of 1932 and ending in 1933.

It is to be noted that each of the bills making the 1933 amendments contained a provision reading as follows:

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"This act... shall be applied in the computation of taxes accruing subsequent to December 31, 1932."

Since Section 4 of the Act provides that the taxes imposed by the Act shall accrue on the first day after the taxable year and since "taxable year" is defined by Section 11 as being the year upon the basis of which the net income which is used as the measure of the tax is computed, it follows, in view of the above provisions, that the amendments were to be applied to the computation of taxes for calendar year corporations for the calendar year 1933 notwithstanding the fact that the amendments were not passed until after the beginning of that year. Thus the law for calendar year corporations for the calendar year 1933 was different from the law for such corporations for the calendar year 1932. Accordingly it would seem that by their own plain and unambiguous terms, the provisions of Section 4 in question were applicable to the computation of taxes of fiscal year corporations for fiscal years falling partly within both of such calendar years.

The argument has been advanced, however, that such an application of these provisions of Section 4 is prohibited by the bill adding the provisions to the act. As noted above, this bill provided that it should be applied in the computation of taxes accruing after December 31, 1932. Since the taxes imposed by the Act accrue on the first day after the close of the taxable year (Sec. 4) the taxes for fiscal years beginning in 1932 and ending in 1933 accrued prior to December 31, 1932. Therefore, it is argued, the provisions added to Section 4 in 1933 can have no application to the computation of such taxes.

This argument, we think, fails fully to comprehend the purpose of the provision in the bills making the 1933 amendments to the effect that they should be applied in the computation of taxes accruing on or after December 31, 1932.

Without such a provision some question would have existed as to the taxes affected by the amendments. Thus, for example, it would have been arguable that such amendments, which did not become effective until May 1933, would have been applicable only to the computation of taxes for fiscal or calendar years commencing after the effective date of the amendments, and would have had no application to the computation of taxes for the calendar year 1933 and for fiscal years commencing in 1933 prior to the effective date of the amendments.

By providing that the bills making the amendments should be applied in the computation of taxes accruing after December 31 1932, the Legislature made definite and certain that the amendments changing the rate, eliminating offsets, etc., would be applied in the computation of taxes for the calendar year 1933 and for fiscal years beginning in 1933 before the amendments became effective. In so doing the Legislature made certain that the law for calendar year corporations for the calendar year 1933 would be different from the law for such corporations for the calendar year 1932, thereby making it necessary that an adjustment be made in the taxes for fiscal years falling partly within both of such calendar years if the changes were to have an equitable

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application to both calendar and fiscal year corporations.

The provisions of Section 4 under consideration set forth a method for making such an adjustment. These provisions were added to the Act by a bill which made other changes and which was one of a series of bills designed to amend the Act in a **com-**prehensive manner.

Under these circumstances we believe it is reasonable to assume that the Legislature intended that the provisions added to Section 4 should be applicable to the computation of taxes for fiscal years beginning in **1932** and ending in 1933. To argue that the provision in the bills regarding the taxes to the computation of which they should be/ applicable indicates a contrary intention is to argue that the Legislature, having made certain by this provision that an adjustment should be made in the taxes for fiscal years, beginning in **1932** and ending in 1933, also intended by the same provision that the adjustment should not be made notwithstanding that it' **added** provisions at the same time specifying the manner of making such an adjustment. In our opinion, we must refuse to attribute any such inconsistent intentions to the Legislature.

Looking at the problem **from** a different view, it is to be observed that the provision in the bills making the 1433 amendments to the effect that they should be applied in the computation of taxes accruing subsequent to December 31, 1932, does not expressly preclude the **application** of the amendments to taxes accruing at an earlier date. Furthermore, we do not believe that this provision was in/ any way designed to postpone the application of the amendments. On the contrary, we believe the purpose of this provision was to insure that the amendments would not be postponed in their application for the first time to the computation of taxes **for** calendar and fiscal years commencing after the effective dates of the amendments, but would be applicable to the **computation** of taxes for the calendar year 1933 and fiscal years **commencing** in 1933 prior to the time the amendments became effective.

Although there is some question regarding the matter, we are of the opinion that, in the **absence** of a provision to the contrary, amendments to the Act are applicable to the computation of taxes for calendar and **fiscal** years current as of the time the amendments become effective.; (See Appeal of United States Oil and Royalties Company, decided by this Board on **May** 10, 1932, and Appeal of Corporation of America et al, decided by this Board on October 12, 1932. See also, R. J. **Traynor**, The Bank and Corporation Franchise Tax Act, Ch. 20, **Ballatine's** California Corporation Laws, p. 739). It will be remembered that the tax involved in this appeal was for a fiscal year which began October 1, 1932 and ended September 30, 1933. Since the provisions of Section 4 under consideration were added to the Act and became effective during **that** year, it follows that they were applicable and should have been followed in the computation of the tax for that year.

For the above reasons we **must** conclude that the Commissioner

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acted erroneously in denying Appellant's claim for refund.

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 denying the claim of Western States Gasoline Corporation for a refund in the amount of \$4,543.22, said amount having been paid as a tax for the fiscal year which began October 1, 1932 and ended September 30, 1933, based upon the return of said corporation for the preceding fiscal year, be and the same is hereby reversed. The correct amount of the tax for said year is hereby determined as the amount produced by means of a computation made in accordance with the last two paragraphs of Section 4 of the Act as amended by Ch. 303 of the Statutes of 1933. The Commissioner is hereby directed to refund to or to give the Western States Gasoline Corporation credit for the difference between the amount so computed and the amount paid by said corporation for said year, and otherwise to proceed in conformity with this order.

Done at Sacramento, California, this 23rd day of July, 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