



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
HOWARD AUTOMOBILE COMPANY)

O P I N I O N

These are appeals pursuant to Section 25 of the Bank and Corporation Franchise Tax Act (Chapter 13, Statutes of 1929, as amended) from the action of the Franchise Tax Commissioner in overruling the protests of Howard Automobile Company to proposed assessments of additional tax for the years 1932 and 1934, based upon its returns for the years 1931 and 1933, respectively. Inasmuch as the problems involved in the two appeals are similar, we have considered the two appeals together.

The proposed assessment for the year 1932, based upon the return for the year 1931, is in the amount of \$373.72. This assessment was proposed due to the inclusion by the Commissioner in the measure of the tax, of interest received during the year from obligations of the United States, and dividends from national banks located outside the state.

The proposed assessment for the year 1934, based upon the 1933 return amounts to \$436.88. Only \$71 of this amount, however, is contested by Appellant. This amount represents that portion of the assessment resulting from the inclusion by the Commission of dividends from national banks located outside the state in the measure of the tax.

This Board has previously had occasion to consider whether interest from obligations of the United States should be included in the measure of the tax and we have held that such interest should be included. (See Appeal of Vortex Manufacturing Company, decided August 4, 1930; Appeal of Howard Automobile Co., decided May 15, 1931; Appeals of Howard Automobile Company of Los Angeles, decided May 13, 1931, and October 15, 1932, respectively, and Appeal of Homestake Mining Company, decided May 10, 1932). We know of no reason why we should reach a different conclusion in the instant appeals. Accordingly, there remains for our consideration only the question whether dividends from banks located outside the state should be included.

In support of its contention that such dividends should not be included in the measure of the tax, Appellant argues that Section 5219 of the United States Revised Statutes, which specifies the methods in which states may tax national banks and their shares, does not permit the states to tax national banks located outside their respective limits. In making this argument Appellant apparently assumes that the inclusion in the measure of the tax of dividends received on shares of banks located outside the state results in taxing such shares or banks.

Appeal of Howard Automobile Company

It has been held, however, that the tax imposed by the Act upon corporations, although measured by income, is not a tax upon income. Pacific Co. vs. Johnson, 285 U. S. 480. Thus **the** inclusion of dividends from **national banks** does not amount to taxing such dividends. If the tax is not upon the dividends, it clearly cannot be a tax upon the banks or their shares from which the dividends are derived.

In further support of its contention, Appellant points out that nowhere in Section **5219** of the United States Revised Statute is it provided that the states may include dividends from national banks located without their limits in the measure of a tax upon corporations. In this argument, Appellant assumes that congressional permission for such inclusion is required.

Although the states may tax national banks and their shares only as Congress permits, we know of no authority holding that any such restriction on the states exists with respect to the inclusion of dividends on national bank shares in the measure of a franchise tax on corporations. If the inclusion of **such** dividends does not **result in** taxing either the dividends, the shares from which derived, or the banks distributing the dividends, we are at a loss to understand why congressional permission is required to make such inclusion any more than it is required to include any other form of income.

For the above reasons we must hold that the Commissioner acted correctly in overruling **Appellant's** protests to the **proposed** additional assessments in question.

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 protests of Howard Automobile Company, a corporation, **against** proposed assessments of additional tax in the amounts of \$373.72 and \$436.88, based upon the returns of said corporation for the years 1931 and 1933, respectively, pursuant to Chapter 13, Statute of 1929, as amended, be and the same is hereby sustained.

Done at Sacramento, California, this 25th day of October, 1935, by the State Board of Equalization.

R. E. Collins, Chairman
John C. Corbett, Member
Fred E. Stewart, Member
Orfa Jean Shontz, Member
Ray L. Riley, Member

ATTEST: **Dixwell L. Pierce**, Secretary