



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
FENN-SHELTON COMPANY)

Appearances

For Appellant: H. A. Harrison, Certified Public Accountant;
J. E. Fenn and F. M. Shelton, President
and Secretary-Treasurer, respectively, of
Appellant
For Respondent: Chas. J. **McColgan**, Franchise Tax Commissione
Frank M. Keesling, Franchise Tax Counsel;
Clyde Bondeson, Senior Franchise Tax Auditor

O P I N I O N

This appeal is made 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 protest of the Fenn-Shelton Company to his proposed assessment of an additional tax in the amount of ~~\$~~**\$240** for the year ended December 31, 1936, based upon the income of the company for the year ended December 31, 1935.

In its return of income for the year 1935 the Appellant claimed a deduction for salaries paid to two of its officers, Mr. J. E. Fenn, and Mr. F. M. Shelton, president and assistant secretary, respectively, in the amount of \$9,000 for each officer. The Commissioner allowed a deduction of ~~\$~~**\$6,000** for each officer, disallowed the balance and levied his proposed assessment accordingly. The propriety of his **action in** disallowing the deduction of each salary to the extent of \$3,000 is the only question presented by this appeal.

Though originally created to conduct a real estate business, the Appellant was engaged during the year 1935 primarily in the operation of a "**super service station**". In addition to the usual sales of petroleum products and lubrication operations conducted by automobile service **stations**, **Appellant's** station included the following departments: tire, battery, radio, electrical, mechanical and speedometer repair, headlight adjustment, paint shop and auto laundry. The service station departments conducted by Appellant enjoyed a gross business of about \$133,000 and the departments thereof leased to others a gross business of about \$40,000 during 1935. Approximately twenty persons were employed by Appellant at the service station during the year.

Mr. Fenn and Mr. Shelton devoted their entire time to the

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Appellant's business which, in addition to the service station operations, included some real estate operations from which about \$6,300 was realized in the form of rentals and commissions. Each holds 49.8% of the Appellant's capital stock, no dividends having been declared or paid thereon during 1935. The amount of salary to be paid to Mr. Fenn and Mr. Shelton was determined during the last month or two of the year, prior to that time salaries of about \$250 a month being drawn by each of them. Although the amount of \$9,000 was accrued and deducted as salary for each officer for the year 1935, only \$6,450 of that amount was actually paid, the balance being left by them with Appellant to expand its operations and being regarded as in the nature of a donated surplus.

Section 8(a) of the Bank and Corporation Franchise Tax Act authorizes a deduction from gross income of "...a reasonable allowance for salaries or other compensation for personal services actually rendered..." We are unable to conclude from the facts set forth herein that the Commissioner acted unreasonably in disallowing the deduction claimed by Appellant for salaries paid to the two officers to the extent of \$3,000 each. Although the successful character of Appellant's operations during the year 1935 may properly be attributable to the efforts and knowledge of the officers, the facts herein set forth, particularly those respecting the nature and extent of Appellant operations, do not, in our opinion, warrant us in determining that the action of the Commissioner was improper. We believe, accordingly, that his action should be sustained.

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 Chas. J. McColgan, Franchise Tax Commissioner, in overruling the protest of the Fenn-Shelton Company to a proposed assessment of an additional tax in the amount of \$240 for the year ended December 31, 1936, based upon the income of said corporation for the year ended December 31, 1935, pursuant to Chapter 13, Statutes of 1929, as amended, be and the same is hereby sustained.

Done at Sacramento California, this 10th day of March, 1938, by the State Board of Equalization,

R. E. Collins, Chairman
Jno. C. Corbett, Member
Fred E. Stewart, Member

ATTEST: Dixwell L. Pierce, Secretary