



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
SECURITY TITLE INSURANCE AND GUARANTEE COMPANY }

Appearances:

For Appellant: W. B. Kibbey, its Attorney; Hylton, Auditor
For Respondent: Chas. J. McColgan, Franchise Tax Commission

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 Security Title Insurance and Guarantee Company to the Commissioner's proposed assessment of an additional tax in the amount of \$935.93 for the year ended December 31, 1931, measured by the net income of the company for the year ended December 31, 1930.

Appellant's business consists principally of the writing of title insurance and guarantee policies. During the year 1930 gross premiums from policies written by it amounted to \$805,766.70 and upon that amount Appellant paid the tax imposed upon the gross premiums of insurance companies by Section 14(b) of Article XIII of the Constitution and Section 3664b of the Political Code. In addition to the gross premiums from title insurance and guarantee policies during 1930, Appellant received income, with respect to which the gross premiums tax was not paid, in the amount of \$426,346.18 from other sources, such as trust deed, escrow and report fees, interest on investments and bank deposits, dividends and rentals.

Construing the Bank and Corporation Franchise Tax Act as applicable to Appellant, the Franchise Tax Commissioner proposed the assessment of an additional tax measured by its net income from sources other than premiums from policies. This appeal from the action of the Commissioner in denying the Appellant's protest against the proposed additional assessment presents the question whether the Appellant is subject to the tax imposed by that Act with respect to net income received by it from sources other than the insurance premiums which served as the measure of its gross premiums tax.

At the time the tax in question was proposed, Section 14(b) of Article XIII of the Constitution provided that the gross premiums tax "...shall be in lieu of all other taxes and license state, county and municipal, upon the property of such companies ...". The validity of the Commissioner's action depends, accordingly, upon whether the tax proposed to be assessed by him is a tax or license upon the property of the Appellant within the

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meaning of this constitutional provision. In Hartford Fire Insurance Company v. Jordan (1914) 168 Cal. 2'70, it was held that the corporation **license** tax imposed by Chapter 386, Statute; of 1905, while, strictly speaking, not a tax on property was nevertheless a tax within the in lieu provisions of Section 14(b) of Article XIII of the Constitution. Similarly, it would seem that while the tax imposed by the Bank and Corporation Franchise Tax is not a tax on the property of the corporations subject thereto, **it** is a tax within the in lieu provisions of that section.

The Commissioner's position is that the operation of Section 14(b) is limited to business activities related to the insurance business and that the in lieu provisions of the section have no application to taxes imposed with respect to business activities of insurance companies which are unrelated to the insurance business. This position is foreclosed, however by the construction of Section 14(b) of Article XIII in the case of Consolidated Title Securities Company v. Hopkins (1934) 1 Cal. (2d) 414, decided since this appeal was submitted. It is pointed out in that decision that the gross premiums tax upon insurance companies imposed by Section 14(b) of Article XIII of the Constitution is the "full measure" of the tax burden upon insurance companies, aside from the tax upon their real property, and that ownership of property by an **insurance company** determines the freedom of that property from taxation. **If this** be true, it follows that even assuming that the income which the Commissioner made the basis of the tax in question resulted from the exercise of a privilege other than the privilege of engaging in the insurance business, this privilege was nevertheless property owned by Appellant and, therefore, free from taxation. See Hartford Fire Insurance Co. v. Jordan, supra, at pages 286-7.

We have concluded, accordingly, that the gross, premiums tax paid by the Appellant pursuant to Section 14(b) of Article XIII of the Constitution and Section 3664b of the Political Code was in lieu of the tax proposed to be assessed by the Commissioner under the Bank and Corporation Franchise Tax Act and that the action of the Commissioner in overruling the protest of the Appellant to that proposed assessment of tax cannot 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 Hon. Chas. J. **McColgan**, Franchise Tax Commissioner, in overruling the protest of the Security Title Insurance and Guarantee Company to his proposed assessment of additional tax in the amount of \$935.93 for the year ended December 31, 1931, based upon the income of the company for the year ended December 31, 1930, be and the same is hereby reversed. Said ruling is hereby

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set aside and the Commissioner is hereby directed to proceed in conformity with this order,

Done at Sacramento, California, this 22nd day of June, 1938, by the State Board of Equalization.

R. E. Collins, Chairman
Jno. C. Corbett; Member
Fred E. Stewart, Member
Wm. G. Bonelli, Member

ATTEST: Dixwell L. Pierce, Secretary