



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
EVANS AUTO AND TRUCK RENTAL COMPANY)

Appearances:

For Appellant: Chas. J. Evans, its President; Nathan Spivock, Accountant
For Respondent: W. M. Walsh, Assistant Franchise Tax Commissioner; Frank M. Keesling, Franchise Tax Counsel

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 protests of the Evans Auto and Truck Rental Company to his proposed assessments of additional tax in the amounts of \$24 and \$108 for the taxable years ended August 31, 1936, and August 31, 1937, respectively.

In its returns of income for the years ended August 31, 1935, and August 31, 1936, the Appellant claimed deductions of \$5,400 and \$7,500, respectively, as salary paid to Mr. Chas. J. Evans, its President and General Manager. The Commissioner allowed a deduction of \$4,800 for each year for the salary of Mr. Evans, disallowed the balance and levied his proposed assessments accordingly. The propriety of this action of the Commissioner is the sole question presented by this appeal.

The Appellant, a family corporation, is engaged in the business of renting automobiles and trucks without drivers, During the income years in question it had for hire about sixty-five motor vehicles. For the income year ended August 31, 1935, its gross income was \$55,436.31 and its net income \$1,775.02. For the following income year its gross income was \$63,423.04, but its net income was only \$854.57. Mr. Evans did not devote his entire time to the management of Appellant's business affairs, but rather divided his time between its affairs and those of the Fourth and Market Street Garage, a corporation, of which he was also the President and General Manager. No dividends were declared or paid by Appellant during either of the income years involved herein,

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..."? The reasonableness of compensation for personal services is essentially a question of fact.

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Judged in the light of the facts hereinabove set forth respecting the nature and size of the Appellant's business, the services rendered by Mr. Evans, the division of his time and efforts between the business affairs of the Appellant and the Fourth and Market Street Garage and the salary paid to him by that corporation for his services to it (See Appeal of Fourth and Market Street Garage, decided this day), we are unable to conclude that the action of the **Commissioner was** unwarranted. Those facts do not establish, in our opinion, that the Commission acted unreasonably in disallowing in part the deductions claimed by Appellant for salary paid to Mr. Evans for his services during the income years ended August 31, 1935, and August 31, 1936, and in limiting such deductions for those years to \$4,800 for each year. The action of the Commissioner is, accordingly, 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 protests of the Evans Auto and Truck Rental Company to proposed assessments of additional tax in the amounts of $\$24$ and \$108 for the taxable years ended August 31, 1936, and August 31, 1937, respectively, pursuant to Chapter 13, Statutes of 1929, as amended, be and the same is hereby sustained.

Done at Los Angeles, California, this 14th day of December, 1938, by the State Board of **Equalization**.

Richard E. Collins, Chairman
Wm. G. Bonelli, Member
Andrew J. Gallagher, Member

ATTEST: Dixwell L. Pierce, Secretary