



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
WATERMAN PLUMBING COMPANY }

Appearances:

For Appellant: Charles A. Thomasset, Attorney at Law

For Respondent: W. M. Walsh, Assistant Franchise Tax
Commissioner

Submitted on memoranda without oral hearing.

O P I N I O N

This appeal is taken 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 Waterman Plumbing Company to his proposed assessments of additional tax in the amount of \$109.94 for the taxable year ended December 31, 1937.

The facts giving rise to the additional assessment are as follows:

Prior to his death on May 12, 1936, the president and sole stockholder of the Appellant was L. D. Warner, and it appears that upon distribution of the estate of L. D. Warner, his wife, Mary A, Warner,, will be the owner of all of said shares of stock. Shortly after the death of L. D. Warner, Mary A. Warner. became the president of the Appellant, and on December 31, 1936, the Board of Directors of Appellant adopted a resolution crediting her with the sum of \$5,000 as compensation to her for her services as president up to that date, It appears that after allowance of this amount the net profit of the Appellant for the year 1936 was less than \$100. The Commissioner has disallowed \$3,250 of said amount as a deduction from Appellant's gross income on the ground that it is in excess of reasonable compensation for the services rendered by Mrs. Warner.

It must be conceded that a salary of the amount awarded Mrs. Warner could only be justified if she was peculiarly qualifi by ability and previous experience to perform the duties that devolved upon the head of a plumbing company,, In view of her stock ownership, of the fact that the salary paid her absorbed practically all of the net profits which the corporation would otherwise have earned, and in view of the further fact appearing from the record that she devoted only a portion of her time to her duties as president, we believe that this amount may not be held to constitute a proper deduction from gross income under

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Section 8a of the Act in the absence of an affirmative showing to the effect that her services were actually worth the amount paid. We further believe, in the absence of any showing as to the nature or value of the services rendered by Mrs. Warner, that a reasonable compensation for the same did not exceed the \$250 per month allowed by the Commissioner. The Appellant, however, has submitted no evidence whatsoever in this matter, and we therefore feel that the action taken herein by the Commissioner must 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 protests of the Waterman Plumbing Company, a corporation, to proposed assessment of additional tax in the amounts of \$109.94 for the taxable year ended December 31, 1937, pursuant to Chapter 13, Statutes of 1929, as amended, be and the same is hereby sustained.

Done at Sacramento, California, this 15th day of November, 1939, by the State Board of Equalization.

Fred E. **Stewart**, Member
George R. Reilly, Member
Harry B. Riley, Member

ATTEST: Dixwell L. Pierce, Secretary