BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
MUTUAL BUILDING & LOAN ASSOCIATION)
OF FULLERTON)

Appearances:

For Appellant: Richard Fitzpatrick and J. Rex Dibble, Attorneys at Law
For Respondent: Harrison Harkins, Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to Section 27 of the Bank and Corporation Franchise Tax Act (Chap. 13, Stats. of 1929, as amended) from the action of the Franchise Tax Commissioner in denying the claim of the Mutual Building & Loan Association of Fullerton for a refund of taxes for the taxable year ended December 31, 1938, in the amount of $317.27.

The Appellant has been classified by the Respondent as a "financial corporation," taxable under Section 4 of the Act at the same basic rate as are banks, rather than at the lower rate to which other corporations are subject. The Appellant has not advanced any objection to this classification, the sole issue presented by the appeal being the proper construction to be placed upon the offset provision of Section 4, which from 1937 to 1939 read in part as follows:

> "Each such financial corporation shall be entitled to an offset against said franchise tax, in the manner hereinafter provided, in the amount of taxes and licenses, other than taxes upon its real property and other than taxes imposed by this act, paid to this State or to any county, city and county, city, town or other political subdivision of the State; .."

Specifically, the issue is whether a building and loan association may offset, as a "license," within the meaning of the above provision, the amount which it is required to pay under the following provision of Section 13.17 of the Building and Loan Association Act:

> "To meet the salaries and expenses provided for by this act, for the payment of which no provision is otherwise made, the Commissioner shall require every association licensed by him or coming under his supervision to pay in advance to him, prior to the issuance of any license, its pro rata amount of all such salaries and expenses . . ."

Section 12.02 of the Building and Loan Association Act require;

all associations, before transacting any business in the state, to obtain a license and that the application for the license be accompanied "by the license fee provided for in this act."

The Appellant contends that because as used in Section 4 of the Bank and Corporation Franchise Tax Act the term "licens cannot be regarded as referring to a permit, in accordance wit the usual meaning of the term, it must necessarily be construed as referring to all amounts exacted as a condition to the granting of a license, and thus to include charges such as those imposed on the Appellant by the Building and Loan Commissioner. Appellant further contends that Section 4 is unambiguous in this respect, and that therefore the extent to which this construction would further or defeat the general purposes of the Act is not a proper matter for consideration.

While it is true that when a statute is unambiguous it must ordinarily be enforced according to the literal meaning of the language used, we are unable to accept the Appellant's argument that the language of Section 4 compels the conclusion that financial corporations may include in their offset the amount of all license fees paid by them, including amounts paid under the above-quoted provision of the Building and Loan Association Act. Appellant's argument, based as it is upon an asserted lack of any abiguity in the statute, seems to be refuted merely by the fact, suggested by Appellant itself, that the term "license" in the offset provision is meaningless if it is read according to its generally accepted connotation. More significant than this circumstance, however, is the fact that the term has for many years been used in California to refer to a particular kind of a tax, namely, a tax imposed upon those engaged in particular occupations or businesses. (See City of Sonora v. Curtin, 137 Cal. 583; City & County of San Francisco v. Pacific Tel, & Tel. Co., 166 Cal. 244; City & County of San Francisco v. Market Street Railway Co., 9 Cal. (2d) 743.)

Of particular significance is the manner in which the Supreme Court, in City & County of San Francisco v. Pacific Tel. & Tel., supra, construed the words "taxes and licenses" in the in lieu provisions of Article XIII, Section 14 of the State Constitution, relating to public utility taxation. In this case, the court read the term "licenses" as including "revenue charges of any character upon the exercise of the franchises which are declared to be taxable for State purposes only" (underscoring added), and in holding the in lieu provisic to be applicable, it specifically pointed out that the exaction before it was "clearly one for revenue only." (166 Cal. at 250, 251.)

These circumstances suggest the possibility that the term "licenses" was used in the 1937 amendment to Section 4 in order to make clear the intent that the offset should not be restricted to property taxes, but should include license or privilege taxes as well, So construed, the term does not embrace all amounts paid as a condition to receiving a license.

In the case of a business or activity requiring special regulation, the police power furnishes authority not only to require a license and to impose other restrictions, but also to condition the granting of the license upon the Payment of a fee sufficient in amount to reimburse the government for the expenses incurred by it in enforcing its regulations. (County of Plumas v. Wheeler, 149 Cal. 758; 4 Colley's Taxation. (4th ed., 1924) p. 3509.) Since building and loan associations are subject to special regulation for the protection of investors, and since the amount of the license fees which are assessed against them under the Building and Loan Association Act is used to defray a portion of the expenses of such regulation, it seems clear that this charge is assessed under the police power rather than under the taxing power.

That it was not in fact intended that the offset allowed financial corporations should include such charges is indicated by a consideration of the purpose that induced the adoption of the Act, namely, to secure a satisfactory tax revenue from national banks. (See The Pacific Co., Ltd. v. Johnson, 212 Cal. 148, 152.) Without going into any detail concerning the many complexities involved in achieving this purpose, which are fully discussed elsewhere, (see Final Report of the California Tax Commission, submitted February 1, 1929, p. 250, et seq; Summary Report of the California Tax Research Bureau in the Office of the State Board of Equalization, p. 78, et seq; Traynor & Keesling, Recent Changes in the Bank & Corporation Franchise Tax Act, 21 Calif. L. Rev. 543, 22 ibid 449, 23 ibi 51) mention may be made of two limitations which Section 5219 of the United States Revised Statutes (12 U. S. C, Sec. 548) imposes upon state taxation of national banks: (1) In the cas of a tax measured by net income, such as that imposed by the Bank and Corporation Franchise Tax Act, the rate may "not be higher than the rate assessed upon other financial corporation and (2) other state and local taxes upon banks, other than taxes upon their real property, are prohibited. (Rosenblatt v. Johnson, 104 U. S. 462.)

It is manifestly for the purpose of complying with the first of these restrictions&hat financial corporations are taxed at the same basic rate/are banks, and to eliminate or reduce the.discrimination that would otherwise result from the second restriction that they are allowed an offset on account of other taxes paid. To the extent that an offset is allowed on account of taxes paid by financial corporations but from which banks are exempted? any discrimination is removed and yet at the same time it appears that there is no violation of the requirement that the bank rate shall not be higher than the rate assessed upon other financial corporation: since the aggregate of the tax assessed against each financial corporation under the Act and other state and local taxes paid by it (exclusive of real property taxes) must necessarily equa the same percentage of the corporation's net income as the rate assessed upon banks, If building and loan associations were allowed to offset against their taxes the amounts assesse

against them to defray the expenses of the Building and Loan Commissioner, the result would be that the aggregate of the taxes paid by them would constitute a lesser percentage of their net income than the rate applied to banks. The actual discrimination against banks which would be caused by such an interpretation becomes all the more apparent when it is observed that charges similar to those imposed under the Building and Loan Association Act are exacted from both state and national banks on account of expenses incurred in their regulation (See Calif. Bank Act, (Stats, 1909, p. 87, as amended) Sec. 123; 12 U. S. C,, Sec. 482)

Since such discrimination would be in conflict with one of the principal purposes of the Act and would seriously jeopardize the validity of the tax as applied to national banks, we are of the opinion that Section 4 of the Act may not be construed as authorizing Appellant to include in its offset amounts paid by it to meet its pro rata share of the expenses of administering the Building and Loan Association Act.

O R D E R

Pursuant to the views expressed in the opinion of the Boar 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 denying the claim of Mutual Building & Loan Association of Fullerton for a refund of taxes in the amount of $317.27, paid by said association for the year ended December 31, 1938, based upon its income for the year ended December 31, 1937, be and the same is hereby sustained.

Done at Sacramento, California, this 7th day of July, 1942, by the State Board of Equalization.

R. E. Collins, Chairman
Wm. G. Bonelli, Member
George R. Reilly, Member
Harry B. Riley, Member

ATTEST: Dixwell L. Pierce, Secretary