



BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the **Appeal of** )  
R. R. ADAMSON )

Appearances:

For Appellant: Harry H. Baskerville, Certified Public  
Accountant  
For Respondent: Harrison **Harkins**, Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to Section 19 of the **Personal** Income Tax Act (Chapter 329, Statutes of 1935, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of R. R. **Adamson** to a proposed assessment of additional tax for the year ended December 31, 1936 in the amount of \$507.71.

The proposed assessment resulted from the findings of the Commissioner that during the year in question the Appellant was the owner of 844 shares of stock in the Artesian Water Company, and the said company was a personal holding company within the meaning of Section 2(o) of the Act. He has, accordingly, in accordance with Section 34 of the Act, treated the company as a partnership and included a proportionate part of its earnings in the Appellant's gross income.

The essential facts are as follows: On March 1, 1928, the Appellant pledged to the Merchants National Trust and Savings Bank of Los Angeles, 844 shares of stock owned by her in the Artesian Water Company. The pledge was made as security for the performance of certain obligations of the Marblehead Land Company, which was wholly owned by the taxpayer and two other individuals. Subsequently, the Bank of America National Trust & Savings Association succeeded to the rights of the original **pledgee**. The pledge agreement gave to the **pledgee** the right to apply the income from the shares to any deficiency which might result from non-performance of the obligations of the Marblehead Land Company. The right to sell the shares for the purpose of making up any deficiency was also granted, and finally, the bank, at its **discretion**, was authorized to transfer any of the shares into its name as **pledgee**. On August 20, 1934, pursuant to the foregoing, the stock was transferred on the books of the Artesian **Water** Company to the "**Bank** of America National Trust & Savings Association, as **pledgee** for Mrs. Rhoda Rindge **Adamson**, under pledge agreement 3/1/28." On July 16, 1935, the Artesian Water Company went into 'receivership.

The propriety of the proposed assessment is contested by the Appellant on the following grounds:

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1. That Section 34 of the Act is unconstitutional in that it violates the due process of law clause of the United States Constitution.

2. That by reason of the pledge, **the Appellant lost the control over** the stock necessary to support a determination that the Artesian Water Company was a **personal** holding company; and

3. That in any case the company ceased to be a personal holding company when it went into receivership in 1935.

Appellant's first point, to the effect that Section 34 of the Act is unconstitutional, has been disposed of **by the** Supreme Court in McCreery v. McColgan (1941), 17 Cal, 2d 555, wherein it was held that this Section, in providing that personal holding companies shall not be deemed to be separate legal entities, is constitutional.

As to the next contention raised by the taxpayer, it seems clear from a reading of Section 2(o) that ownership of the stock and not control over it is the principal element to be **considered**. Hence, we are confronted with the question as to whether the ownership of the stock was affected by the pledge or by the transfer of the stock to the **pledgee** upon the books of the corporation.

It appears to be a well established rule in this State that as between pledgor and **pledgee** the general property in a pledge remains in the pledgor notwithstanding an apparent transfer of legal title to the **pledgee**. (Bank of America v. Figueroa, 218 Cal. 281, 286; Tracy v. Stock Assur. Bureau (1933) 132 Cal. App. 573.) In the instant case the pledged stock was transferred on the books of the **Artesian Water Company** from the taxpayer to "**Bank of America National Trust & Savings Association, as pledgee for Mrs. Rhoda Rindge Adamson under pledge agreement 3/1/28.**" The intention of the parties as to the capacity in which the bank **took the** stock was thus clearly expressed and made free from all doubt, and having taken the stock as **pledgee**, the transferee bank was not the owner thereof.

The Appellant has failed to offer any reasons or authorities in support of her position that the receivership of the Artesian Water Company terminated its existence **as** a personal holding company. We believe this contention of the taxpayer is likewise without merit. The appointment of a receiver determines no right except the bare right of possession, nor does it affect in **any** way the title to any **part** of the property in litigation. (Von Roun v. Superior Court (1888) 58 Cal. 358; 22 Cal. Juris 437.) Thus, it has been held that where a partnership is in the hands of a receiver one of the partners may sell his interest in the partnership business and enforce his contract of sale if the buyer refuses to perform. (Schurtz v. Romer (1890) 82 Cal. 474.) We are, therefore, of the opinion that the fact of receivership did not affect in any way the ownership by the Appellant of the 844 shares of stock in the Artesian Water Company

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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 R. R. **Adamson** to a proposed assessment of additional tax in the amount of **\$507.71** for the year ended December **31, 1936**, be and the same is hereby sustained.

Done at Sacramento, California, this 4th day of **August**, 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