



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
WHITTELL REALTY COMPANY)

Appearances:

For Appellant: John V. Copren, its Attorney

For Respondent: James J. Arditto, Franchise Tax Counsel.

O P I N I O N

This is an appeal under 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 Whittell Realty Company to the Commissioner's proposed assessments of additional tax in the amounts of \$1,339.57 and \$1,024.98 for the taxable years 1934 and 1935, respectively.

It now appears that after this appeal was made the Respondent demanded that Appellant pay the tax in question and advised Appellant that, unless the payment were made, Respondent would take the necessary steps pursuant to Section 32 of the Act to suspend Appellant's corporate powers, rights and privileges. It also appears that by reason of such demand Appellant paid the tax under protest and has since filed a claim for refund which has been denied by Respondent.

Irrespective of the propriety of the action of the Respondent in threatening to suspend the corporate franchise of the Appellant to induce payment of the tax in question after the appeal had been taken, it is evident that this payment has made the questions involved moot. (Estate of Cohn, 36 C. A. (2d) 676.) Notwithstanding, Appellant insists that we should proceed to a determination of these questions, urging that our decision would be of value of bringing the controversy to a just conclusion.

We are impressed, however, with the conviction that the only effectual order that we may now make in this matter is one dismissing the appeal on the grounds that the proceedings have become moot. Even if it be assumed that after consideration of the appeal we would feel compelled to render a decision favorable to the Appellant on the merits of the case we could make no order that could have the effect of securing a refund of the tax that has been paid. We are advised that Appellant has claimed a refund of this tax, pursuant to Sections 27 and 30 of the act cited, and we think that its remedy now is to prosecute this claim.

O R D E R

Appeal of Whittell Realty Company

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 appeal of **Whittell** Realty Company from the action of Chas. J. **McColgan**, Franchise Tax Commissioner, in overruling its protest to his proposed additional assessments of tax in the amounts of **\$1,339.57** and **\$1,024.98** for the taxable years 1934 and 1935, respectively, pursuant to the Bank and Corporation Franchise Tax Act, be and the same is hereby dismissed as moot by reason of the payment of the amounts of said taxes, and each of them during the **pendency** of this appeal,

Done at Sacramento, California, this 24th day of September, 1943, by the State Board of Equalization..

R. E. Collins! Chairman
Wm. G. **Bonelli**, Member
Geo. R. Reilly, Member
J. H. Quinn, Member

ATTEST: Dixwell L. Pierce, Secretary