



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
U. S. ROYALTY OIL CORPORATION)

Appearances:

For Appellant: Roland T. Williams, Attorney at Law

For Respondent: James J. Arditto, 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 protest of U. S. Royalty Oil Corporation to his proposed assessment of additional tax in the amount of \$149.83 for the taxable year ended December 31, 1938, based upon the income of the corporation for the year ended December 31, 1937.

Appellant received dividends of \$7,511.43 from Consolidated Royalties, Inc., and claimed the whole thereof as a deduction pursuant to Section 8(h) of the Bank and Corporation Franchise Tax Act. The Franchise Tax Commissioner only allowed 49.422% of this claimed deduction on the theory that only that percentage thereof had "been included in the measure of the tax imposed" upon Consolidated Royalties, Inc., inasmuch as Consolidated Royalties, Inc., had taken the 27½% deduction for depletion permitted by Section 8(g).

In Burton E. Green Investment Co. v. McColgan, 60 A. C. A. 275 (August 27, 1943) the court held that "the income included in the measure of the tax is all income" and held that dividends received from a corporation which had reported all of its revenues as gross revenues for franchise tax purposes were proper deductions in computing the net taxable income of the recipient notwithstanding the fact that the corporation declaring the dividends had taken a 27½% depletion deduction.

On the basis of that decision, it is our opinion that no part of said dividends of \$7,511.43 was taxable.

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in these proceedings, and good cause appearing therefor,

Appeal of U. S. Royalty Oil Corporation

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the action of Chas. J. **McColgan**, Franchise Tax Commissioner, in overruling the protest of U. S. Royalty Oil Corporation to a proposed assessment under the Bank and Corporation Franchise Tax- Act of an additional tax in the amount of \$149.83 for the taxable year ended December 31, 1938, based upon the income of said corporation for the year ended December 31, 1937, pursuant to Chapter 13, Statutes of 1929, as amended., be and the same is hereby reversed.

Done at Los Angeles, California, this 9th day of November, 1943, by the State Board of Equalization.

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

ATTEST: Dixwell L. Pierce, Secretary