



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
DEL AMO ESTATE COMPANY)

Appearances:

For Appellant: John T. Riley, Attorney at Law.

For Respondent: W. M. Walsh, Assistant Franchise Tax Commissioner; Harrison Harkins, Associate 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 Del Amo Estate Company to a proposed assessment of additional tax in the amount of \$1,014.51 for the taxable year ended December 31, 1938.

The greater portion of the proposed assessment resulted from the action of the Commissioner in disallowing in part a deduction claimed by the Appellant under Section 8(h) of the Act for dividends received from the Dominguez Estate Company in the sum of \$64,680. The propriety of this action is the only question presented herein as the Appellant does not contest the balance of the assessment.

The dividends in question were received by Appellant in 1937 and included in its return of income for that year. The entire business of the declaror corporation, the Dominguez Estate Company, was done within California. That Company in computing its net income for franchise tax purposes took a depletion deduction of 27 1/2% of its gross income from certain property pursuant to Section 8(g) of the Act. The Commissioner determined that the depletion deduction so computed exceeded a reasonable deduction for depletion computed on the basis of cost and that the dividends were therefore declared in part from income which had not been included in the measure of the tax imposed by the Act on the declaror corporation.

It is at once apparent that the situation presented herein is identical with that recently passed upon in Burton E. Green Investment Company v. McColligan, 60 Cal. App. (2d) 224; hearing in California Supreme Court denied October 11, 1943. On the authority of that decision it must be held that the Commissioner acted improperly in disallowing in part the deduction claimed by the Appellant for dividends received by it from the Dominguez

Appeal of Del Amo Estate Company

Estate Company in the amount of \$64,680.

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 Del Amo Estate Company to a proposed assessment of additional tax in the amount of **\$1,014.51** for the taxable year ended December 31, 1938, pursuant to Chapter **13**, Statutes of 1929, as amended, be and the same is hereby modified as follows: Said Commissioner is hereby directed to allow the deduction from gross income of **\$64,680** claimed by said Company as dividends deductible under Section 8(h) of said Act; in all other respects the action of the Commissioner is hereby sustained.

Done at Sacramento, California, this 11th day of May, 1944, by the State Board of Equalization.

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

ATTEST: Dixwell L. Pierce, Secretary