



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
JOHN G. and ESTELLE K. CLEMSON }

Appearances:

For Appellant: Harry C. Biby, Attorney at Law.

For Respondent: W. M. Walsh, Assistant Franchise Tax Commissioner*, James J. Arditto, Franchise 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 **1939**, as amended) from the action of the Franchise Tax Commissioner in overruling the protests of John G. and Estelle K. Clemson to proposed assessments of additional tax in the amounts of ~~\$658.07~~, **\$618.70**, **\$587.60** and **\$684.98** for the taxable years **1936**, **1937**, **1938** and **1939**, respectively.

After the appeal was filed, however, the Appellant paid the amounts of the proposed assessments. They stated at the time of the payment that such was being made only for the purpose of preventing the further running of interest on any sums that might ultimately be found to be due and that it was in no way an admission that the amounts of such assessments were actually due. Appellants have indicated that they desire that the appeal be determined notwithstanding the payment.

In the Appeal of Whittell Realty Company (September **24**, 1943) we held that payment of the amount of tax involved in an appeal under Section 25 of the Bank and Corporation Franchise Tax Act from the action of the Commissioner in overruling a protest to a proposed assessment of additional tax under the Act rendered moot the questions presented by the appeal. See Estate of Cohn, **36** Cal. App. (2d) **676**. We pointed out in our opinion in that matter that the only effectual order we could make under the circumstances was one dismissing the appeal on the ground that the proceeding had become moot. As we stated therein, "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."

Since Section **19** of the Personal Income Tax Act is identical with Section **25** of the Bank and Corporation Franchise Tax Act so far as our authority to hear and determine appeals from the

Appeal of John G. and Estelle K. Clemson

action of the Commissioner on protests against proposed assessments is concerned, the present proceeding must also be dismissed on the ground that it has become moot. We have been advised that the Appellants have filed a claim for the refund of the amounts of tax in question pursuant to Section 20 of the Personal Income Tax Act and their proper remedy at this time, in our opinion, is the prosecution of that claim.

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 appeal of John G. and Estelle K. Clemson from the action of Chas. J. McColga Franchise Tax Commissioner in overruling their protests to proposed assessments of additional tax in the amounts of ~~¶658.07~~, \$618.70, \$587.60 and \$684.98 for the taxable years 1936, 1937, 1938 and 1939, respectively, pursuant to Chapter 329, Statutes of 1939, as amended, be and the same is hereby dismissed as moot by reason of the payment of the amounts of such proposed assessments, and each of them, during the pendency of this appeal.

Done at Los Angeles, California, this 31st day of May, 1944, by the State Board of Equalization.

Wm. G. Bonelli, Member
J. H. Quinn, Member
Geo, R. Reilly, Member

ATTEST: Dixwell L. Pierce, Secretary