



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
EDWARD TISCORNIA }

Appearances:

For Appellant: A. A. Tiscornia, Attorney at Law.

For Respondent: W. M. Walsh, Assistant Franchise Tax Commissioner; Crawford H. Thomas, Assistant 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 protests of Edward Tiscornia to proposed assessments of additional tax in the amounts of \$165.43 and \$51.69 for the taxable years ended December 31, 1937, and December 31, 1939, respectively.

The Appellant reported his income for the years 1937 and 1939 on the cash receipts and disbursements basis. On his 1937 return he claimed a deduction of \$4,906.77 for interest paid in that year for the period February 12, 1929, to February 12, 1932, and on that for 1939 a deduction of \$5,000 for interest paid in that year for the period February 12, 1932, to May 12, 1934. The Commissioner disallowed the deductions on the ground that the interest accrued prior to 1935 and, accordingly, was not deductible under that portion of Article 36-1 of the Regulations Relating to the Personal Income Tax Act of 1935 providing that "obligations incurred prior to January 1, 1935, may not be deducted, even though paid on or after that date by a taxpayer reporting on the cash receipts and disbursements basis."

In view of the holding in Dillman v. McColgan, 63 A.C.A. 563 (hearing in California Supreme Court denied May 18 1944), that this ruling was not authorized by the Act, the action of the Commissioner must be reversed.

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

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the protests of Edward Tiscornia to proposed assessments of additional tax in the amounts of \$165.43 and \$51.69 for the taxable years ended December 31, 1937, and December 31, 1939, respectively, pursuant to Chapter 329, Statutes of 1935, as amended) be and the same is hereby reversed. Said ruling is hereby set aside and the Commissioner is hereby directed to proceed in conformity with this order.

Done at Sacramento, California, this 19th day of July, 1944,
by the State Board of Equalization.

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

ATTEST: Dixwell L. Pierce, Secretary