



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
BRONNE'S, INC.)

Appearances:

For Appellant: Sam M. Weiner, Certified Public Accountant

For Respondent: W. M. Walsh Assistant Franchise Tax Commissioner; James J. Arditto, Franchise Tax Counsel

OPINION

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 Bronne's Inc. to proposed assessments of additional taxes in the amounts of \$290.50 and \$208.76 for the taxable years ended December 31, 1940, and December 31, 1942, respectively.

The capital stock of Appellant, a California corporation, was almost entirely owned by Adolph Bronne, its president, during the income years 1939 and 1941. To strengthen the Appellant's financial condition, Mr. Bronne cancelled a portion of the indebtedness owed to him by it, that indebtedness arising from loans made by him to the Appellant, in the amount of \$9,325.00 on December 31, 1939, and in the amount of \$5,900.00 on February 2, 1941. Examination of the surplus account of Appellant, which was presented in affidavit form, indicates that despite the cancellation of its indebtedness, the Appellant was insolvent and suffered net operating losses in each year from 1933 to 1942. This insolvency existed even though the Appellant's assets were overvalued, as evidenced by Mr. Bonne's noncontroverted verified statement.

The sole issue is whether the Appellant realized taxable income, under Section 6(d) of the Bank and Corporation Franchise Tax Act, from the gratuitous discharge of its obligations.

The relevant provisions of that Section applicable for the taxable years herein involved were as follows:

"If the indebtedness of a bank or corporation is cancelled or forgiven in whole or in part without payment, the amount so cancelled or forgiven shall constitute income to the extent the value of the property (including franchises) of the bank or corporation exceeds its liabilities immediately

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"after the cancellation or forgiveness..."

It is apparent that under this Section no taxable income can result where immediately before and immediately after the transaction, the debtor is insolvent. Such was the case here.

ORDER

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, pursuant to Section 25 of the Bank and Corporation Franchise Tax Act that the action of Chas. J. McColgan, Franchise Tax Commissioner in overruling the protest of Bronne's Inc. to proposed assessments of additional taxes in the amounts of \$290.50 and \$208.76 for the taxable years ended December 31, 1940, and December 31, 1942, respectively, 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 June, 1946,
by the State Board of Equalization.

Wm. G. Bonelli, Member
J. H. Quinn, Member
Thomas H. Kuchel, Member

ATTEST: F. S. Wahrhaftig, Acting Secretary