

BEFORE THE STATE BOARD OF EQUALIZATION



OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
SHELLMAR PRODUCTS CORPORATION)

Appearances:

For Appellant: Kenneth L. Warren, its Controller;
B. Verson, its Treasurer

For Respondent: W. M. Walsh, Assistant Commissioner;
Burl D. Lack, Chief Counsel;
Crawford H. Thomas, 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 on the protest of Sheilmar Products Corporation to a proposed assessment of additional tax in the amount of \$11,002.61, the tax having been reassessed by the Commissioner in the amount of \$6,997.08, for the taxable year ended December 31, 1945.

We are met at the outset with the question whether we possess jurisdiction to hear and determine this matter. Section 25 of the Act provides that the Commissioner's action upon a taxpayer's protest "...shall be final upon the expiration of 30 days from the date when he mails to the taxpayer notice of his action, unless within that 30-day period the taxpayer appeals in writing from the action of the Commissioner to the State Board of Equalization.*' This appeal was filed with us on July 28, 1947. If, then, the Commissioner's allegation that his notice of action on the taxpayer's protest was mailed to it on May 20, 1947, is determined to be correct, there can be no doubt as to our lack of authority to proceed with the consideration of the matter.

The Appellant does not deny that the Commissioner mailed to it on May 30, 1947, a document reading, in part, as follows:

STATE OF CALIFORNIA

Office of
FRANCHISE TAX COMMISSIONER
SACRAMENTO

Shellmar Products Corporation
successor to Shellmar Products
Company #184208
Mount Vernon, Ohio

Notice of Action of
Franchise Tax
Commissioner Upon
Taxpayer's Protest

200680

Dated at Sacramento, California
May 20, 1947

YOU ARE HEREBY NOTIFIED, That pursuant to the terms of Section 25 of the Bank and Corporation Franchise Tax Act and the protest which you filed complaining of the computation and levy of your tax by the Franchise Tax Commissioner under said act as disclosed by return filed for the income year beginning January 1, 1944 and ended December 31, 1944, as set forth in Notice of Additional Franchise Tax Proposed to be Assessed, No. 46916, dated March 26, 1946, in the amount of \$11,002.61,

The computation and levy complained of have been reconsidered by the Franchise Tax Commissioner and he has acted upon said protest as follows:

In accordance with the information submitted to this office tax liability has been redetermined in accordance with the following computation:

Item 51 Net income as previously revised
Renegotiation
Accelerated amortization
Item 51 Income to allocate
Item 52 Allocated to Calif. 8.68670%

(Computation of liability omitted)

Item 58 Tax 4%
85%
Previously assessed
Additional tax

Interest has accrued on the deficiency at the rate of six percent per annum from March 15, 1945.

mc

CHAS. J. MCCOLGAN
Franchise Tax Commissioner

By _____
Chas. A. Temple

Appeal of Shellmar Products Corporation

The Appellant contends, however, that this Notice was inadequate as a Notice of Action upon its protest and, accordingly, that the 30-day period provided by Section 25 did not begin to run from May 20, 1947. In support of this contention it points out that its protest against the Commissioner's proposed assessment was based on objection to his action in determining its California income through an allocation formula rather than separate accounting, that wholly apart from the protest it was entitled to a tax credit or refund as a result of its Renegotiation Agreement with the United States with respect to the year 1944, that the Notice of Action of May 20, 1947, reflected only the renegotiation credit and did not refer in any way to the allocation formula versus separate accounting controversy and that it, accordingly, interpreted the Notice merely as an allowance of that credit and not as a final action denying its protest against the Commissioner's use of an allocation formula.

The Appellant's position cannot, in our opinion be sustained. The document of May 20, 1947, bore the heading "Notice of Action of Franchise Tax Commissioner Upon Taxpayer's Protest." Its opening sentence referred to Section 25 of the Bank and Corporation Franchise *Tax Act and the protest filed by Appellant". complaining of the Commissioner's computation and levy of the tax. It expressly stated

"The computation and levy complained of have been reconsidered by the Franchise Tax Commissioner and he has acted upon said protest as follows:"

In view of this specific language we do not believe Appellant was warranted in assuming that the Notice of Action related only to the renegotiation tax credit and did not constitute a notification of the action of the Commissioner on its protest. The Notice clearly stated that it related to the protest filed by the taxpayer under Section 25 and the fact that the Commissioner indicated thereon the allowance of the tax credit to which the taxpayer was entitled as a result of its Renegotiation Agreement did not detract from its adequacy as a notification of his action on the protest. The position of the Commissioner that the appeal was not filed within the time required by law and that we are without authority to consider it must, therefore, be sustained.

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, pursuant to Chapter 13, Statutes of 1929, as amended, that the appeal of Shellmar Products Corporation from the action of Chas. J. McColgan, Franchise Tax Commissioner, on its protest to a proposed assessment of additional tax in the amount of \$11,002.61, the tax having been reassessed by the Commissioner in the amount of \$6,997.08, for the taxable year ended December 31, 1945, be and the same is hereby dismissed for want of jurisdiction.

Appeal of Shellmar Products Corporation

Done at San Francisco, California, this 10th day of March, 1948, by the State Board of Equalization.

Wm. G. Bonelli, Chairman
Geo. R. Reilly, Member
J. H. Quinn, Member
J. L. Seawell, Member
Thomas H. Kuchel, Member

ATTEST: Dixwell L. Pierce, Secretary