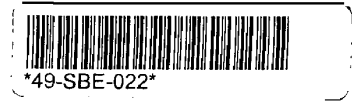


BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA



In the Matter of the Appeal of)
)
TITLE INSURANCE AND TRUST COMPANY)

OPINION ON REHEARING

The petition for rehearing filed by the Appellant in the above entitled matter is limited to the single issue of the applicability of the Bank and Corporation Franchise Tax Act to it for the taxable year 1943. It is the position of the Appellant that in sustaining the Franchise Tax Commissioner's proposed assessment of additional franchise tax in the amount of \$5,639.85 for the taxable year 1943, we have thereby sanctioned the use of its 1942 income as the measure of the tax in violation of paragraph (a) of Section 14 4/5 of Article XIII of the California Constitution, which reads as follows:

"(a) Those provisions of Section 14 3/4 of this article relating to taxation of insurance companies and associations shall remain effective as to business done in this State prior to January 1, 1943, and as to the assessment, levy, collection and adjustment of taxes with respect to such business done prior to that date; but as to such business done subsequent to December 31, 1942, those provisions of Section 14 3/4 relating to taxation of insurance companies and associations shall not apply, and this section shall apply thereto.97

Appellant claims that under this provision not only were its trust department activities exempt from franchise tax for the taxable year 1942 by virtue of former section 14 3/4, as we have found, but its trust department income for that year could not be considered in the computation of the tax for the taxable year 1943. It lays emphasis in this connection on the continuation in existence of the provisions of Section 14 3/4 with respect to ".... business done....prior to January 1, 1943...." It further argues that Section 14 4/5 does not contemplate that there be any overlapping of its provisions and Section 14 3/4 to the extent that the year 1942 might be used as the measure of the insurance tax under Section 14 3/4 and the measure of the franchise tax under Section 14 4/5. In support of its interpretation of the effective date provision of Section 14 4/5 it states that the Legislature in enacting Revenue and Taxation Code Sections 12253 and 12255, both pertaining to the taxation of insurers transacting a title insurance business, provided that the effective date of those Sections was December 31, 1943 (Stats. 1943, p. 2838).

The contentions of the Appellant do not, in our opinion, establish the invalidity of our original determination. The franchise tax which we sustained for the taxable year 1943 was

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imposed upon Appellant for the privilege of exercising its corporate franchise in the doing of business during that year (Section 4(3), Bank and Corporation Franchise Tax Act) even though that tax was measured by income for the year 1942. Spring Valley Co., Ltd. v. Johnson, 7 Cal, App. 2d 258. The franchise tax, being imposed with respect to business done during one year and measured by the net income of the next preceding year, differs materially from the insurance tax which is imposed for the privilege of doing business in the year preceding that in which the tax is assessed. Carpenter v. Peoples Mutual Life Insurance Co., 10 Cal. 2d 299.

This distinction between the taxes furnishes the answer to Appellant's argument on the overlapping of Sections 14 3/4 and 14 4/5. It is quite true that the Sections were not intended to overlap. They do not do so under our view. As respects operations, conducted by Appellant in 1942, the provisions of Section 14 3/4 are clearly continued in effect by Section 14 4/5(a), for under the Peoples Mutual Life Insurance Co. case the insurance tax assessed in 1943 was imposed for the year 1942. Section 14 4/5 becomes effective for both insurance tax and franchise tax purposes on January 1, 1943, the nature of those taxes being such, however, that the franchise tax payable for and paid in 1943 is measured by 1942 income while the insurance tax payable for 1943 is first assessed in 1944.

So far as legislative interpretation, based on the December 31, 1943, effective date of Revenue and Taxation Code Sections 12253 and 12255 is concerned, it is sufficient to point out that those Sections constituted only a small part of an act adding and amending many sections of the insurance tax law. Several of the sections amended related to administrative matters involving the assessment and collection of the tax and it was obviously advisable to defer the operation of the amended sections to the next complete tax year. Sections 12253 and 122.55, referred to by Appellant, simply embody provisions of Section 14 4/5 and the addition of those provisions to the Code could in no way affect the application of the constitutional provision. Legislative action, while undoubtedly an aid to construction in many instances, is accordingly, of no significance in this case.

C R D E R

Pursuant to the views expressed in the opinion on rehearing 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 petition for rehearing filed by the Title Insurance and Trust Company in the matter of its appeal from the action of the Franchise Tax Commissioner on its protests to proposed assessments of additional tax in the amounts of \$6,008.67, \$5,639.85 and \$1,675.29 for the taxable years 1942, 1943 and 1944, respectively;

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be and the same is hereby denied and that the order of the Board of January 27, 1949, in said matter be and the same is hereby reaffirmed.

Done at Sacramento, California, this 15th day of September, 1949, by the State Board of Equalization.

George R. Reilly, Chairman
J. H. Quinn, Member
J. L. Seawell, Member
Wm. G. Bonelli, Member

ATTEST: Dixwell L. Pierce, Secretary