

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA



In the Matter of the Appeal of)
RICHFIELD OIL CORPORATION)

Appearances:

For Appellant: David Guntert, Attorney at Law

For Respondent: Burl D. Lack, Chief Counsel;
Mark Scholtz, Associate Tax Counsel

OPINION

This appeal is made pursuant to Section 27 of the Bank and Corporation Franchise Tax Act (Chapter 13, Statutes of 1929, as amended) from the action of the Franchise Tax Commissioner (now succeeded by the Franchise Tax Board) in denying the claims of Richfield Oil Corporation for refunds of tax in the amounts of \$33,874.99 and \$15,751.87 interest thereon, \$10,714.77 and \$4,339.48 interest thereon, and \$14,925.67 and \$5,149.36 interest thereon, for the income years 1938, 1939, and 1940, respectively.

The single issue involved herein is the validity of the 1943 amendment (Statutes 1943, Chapters 37 and 352) of Section 25 [now Section 25(f)] of the Bank and Corporation Franchise Tax Act extending the period for the issuance of an additional assessment to six months after the expiration of any period of extension agreed upon between the taxpayer and the United States Commissioner of Internal Revenue for assessing deficiencies in Federal income tax, if such period ends later than the normal four year period of limitation. The Appellant signed Federal waivers extending until December 31, 1944, the time for the assessment of Federal income taxes for the years here in question. The additional assessments involved herein were issued on June 27, 1945, and thus were within the additional six month period but subsequent to the normal four year period prescribed in Section 2.5.

Appellant contends that the 1943 amendment makes an arbitrary and unreasonable classification of taxpayers, including Appellant, in violation of the 14th Amendment of the United States Constitution; precludes uniform operation of the laws of the State of California in violation of Article I, Section 11 of the State Constitution; grants special privileges and immunities in violation of Article I, Section 21 of the State Constitution; and amounts to special legislation with respect to the time for the assessment and collection of taxes in violation of Article IV, Section 25 of the State Constitution.

We have heretofore pointed out in our opinions in appeals from the action of the Franchise Tax Commissioner on protests to proposed assessments of additional tax under Section 25 of the

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Bank and Corporation Franchise Tax Act, that it was our practice to uphold the position of the Commissioner on constitutional issues in order to leave the question of constitutionality open for judicial determination. See, e.g., Appeal of F. T. and Fumiko Mitsuuchi, January 5, 1949. We regard it as doubtful, however., whether the underlying reason for this practice is pertinent in an appeal from the action of the Commissioner denying a claim for refund under Section 27 of the Act inasmuch as Subsection (d) of that Section authorizes the bringing of an action by the Commissioner (now succeeded by the Franchise Tax Board) for the recovery of a refund or any portion thereof which is erroneously made. The Section does not in terms preclude such an action after a refund made by the Commissioner pursuant to the order of this Board and while it might perhaps be so construed we are reluctant to proceed upon the basis of such a construction until it shall receive judicial approval. Until such time, accordingly, as it may appear that the Commissioner (now succeeded by the Franchise Tax Board) is without authority to bring an action to recover, in whole or in part, a refund ordered by this Board, we shall pass upon constitutional issues presented in appeals involving refunds.

The rule is well established that Sections 11 and 21 of Article I and Section 25 of Article IV of the California Constitution are not violated by a statute if it operates uniformly upon all persons or things within a class, and the classification is a reasonable one, i.e. based upon some distinction, natural, intrinsic, or constitutional, which suggests a reason for and justifies the particular legislation. -Martin v. Superior Court, 194 Cal. 93; In re Lake, 89 Cal, App. 390. The same rule applies under the 14th Amendment of the United States Constitution. Radice v. New York, 264 N.S, 292; Ohio Oil Company v. Conway, 281 U. s. 146.

The Legislature has wide discretion in exercising its power to classify; every presumption is in favor of the validity of the legislative determination and it will not be overthrown unless it is plainly arbitrary. In re Schmolke, 199 Cal. 42; County of Los Angeles v. Hurlbut, 44 Cal. App. 2d 88; Lindsley v. Natural Carbonic's Co., 220 U.S. 61.

Information respecting the Federal income tax liability of Federal taxpayers is made available to state income tax administrators under Section 55(b) of the Internal Revenue Code and Section 29.55(b)-1 of the Federal Income Tax Regulations 111. It is at once apparent that information respecting Federal deficiencies would be of little or no value to a state administrator if, by virtue of the granting by the taxpayer of extensions to the Commissioner of Internal Revenue for the completion of examinations or audits and the assessing of deficiencies, the period for assessment of the state tax expired before the Federal information was available to the state. It was to meet this situation that Section 25 was amended in 1943 and it must be concluded, in our opinion, that the amendment, which was designed to facilitate the administration of the tax by permitting the more effective use of Federal information available

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to the State, did not result in any unreasonable or arbitrary classification under either.. the Federal or State Constitution.

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 27 of the Bank and Corporation Franchise Tax Act (Chapter 13, Statutes of 1929, as amended) that the action of the Franchise Tax Commissioner (now succeeded by the Franchise Tax Board) in denying the claims of Richfield Oil Corporation for refunds of tax in the amounts of \$33,874.99 and \$15,751.87 interest thereon, \$10,714.77 and \$4,339.48 interest thereon, and \$14,925.67 and \$5,149.36 interest thereon, for the income years 1938, 1939, and 1940, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 2 day of March, 1950, 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