

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA



In the Matter of the Appeal of )  
UNITED AIRCRAFT PRODUCTS, INC. )

Appearances:

For Appellant: Arthur L. Murray, Attorney  
at Law

For Respondent: Burl D. Lack, Chief Counsel;  
Milton Huot, Associate Tax  
Counsel

O P I N I O N

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) on the claim of United Aircraft Products, Inc., for refunds of tax in the amounts of \$70.81, \$36,386.90, \$58.22 and \$39.51 for the income years ended November 30, 1943, 1944, 1944 and 1945, respectively, the Commissioner having made the refunds in 1949 but having allowed interest only to and including July 9, 1947, on the amount of tax refunded.

The refund claims were based upon a decrease in Appellant's income due to the renegotiation of one of its contracts with the United States and the allowance of additional amortization deductions on emergency facilities. The Appellant does not question the amounts of tax refunded by the Commissioner but objects to his action in allowing interest on those amounts only to and including July 9, 1947. It contends that interest should have been allowed, in accordance with Section 27 of the Bank and Corporation Franchise Tax Act, up to within thirty (30) days of the time of refund of the overpayments.

At the time the overpayments were made, Section 27(c) of the Act provided in part as follows:

"Interest shall be allowed and paid upon any overpayment of any tax, if the overpayment was not made because of an error or mistake on the part of the taxpayer, at the rate of 6 per centum per annum ...." (emphasis added)

This provision was amended, however, by Chapter 1317, Statutes of 1947, effective July 10, 1947, to read as follows:

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"Interest shall be allowed and paid upon any overpayment of any tax, if the overpayment was made because of an error or mistake on the part of the commissioner, at the rate of 6 per centum per annum ..." (emphasis added)

The Appellant does not contend that the overpayments in question were the result of an error or mistake on the part of the Commissioner. There is presented for decision, accordingly, only the question whether the 1947 amendment to Section 27(c) operated from its effective date to prevent the running of interest on overpayments of tax made prior thereto.

This question has been considered recently by the Attorney General of the State of California, his Opinion No. 50/45 of March 23, 1950, stating as follows:

"A somewhat analogous question was presented in the recent case of Gregory vs. State of California (1948) 32 Cal. 2d 700, 197 P. 2d 728. In that case a gift tax recovery action was pending at the time the taxing act was amended to allow interest on overpayments, the payment of such interest not previously being permitted. It was held that the taxpayer in obtaining judgment for the amount of the tax was entitled to interest from the effective date of the amendment. In the course of its opinion the Court said, at page 703:

'Moreover, it should be noted that whatever the law may be elsewhere it has always been the rule in California that there is no implied contract of any kind that the state will pay interest on its indebtedness for it is liable only when made so by statute.'

"Utilizing the basic premise of the Gregory case, it must follow that while an interest obligation based upon contract may resist change, a statutory interest right for a particular period depends upon the law in effect during that period. That such is the law has been settled in this State for many years. White vs. Lyons (1871) 42 Cal. 279, 284

"It is concluded, therefore, that the taxpayer may not recover interest upon its overpayments of tax subsequent to the effective date of the 1947 amendment to section 27(c)."

In view of this Opinion and the authorities cited therein, the action of the Commissioner must 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 Section 27 of the Bank and Corporation Franchise Tax Act, that the action of the Franchise Tax Commissioner (now succeeded by the Franchise Tax Board) on the claim of United Aircraft Products, Inc., for refunds of tax in the amounts of \$70.81, \$36,386.90, \$58.22 and \$39.51 for the income years ended November 30, 1943, 1944, 1944 and 1945, respectively, the Commissioner having allowed interest only to and including July 9, 1947, on the amount of tax refunded, be sustained.

Done at Sacramento, California, this 17th day of May, 1950,  
by the State Board of Equalization,

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

ATTEST: Lixwell L. Pierce, Secretary