BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
MOTION PICTURE FINANCIAL CORPORATION)

Appearances:

For Appellant: Hugh G. Glass, Certified Public Accountant, and

Leonard J. Levy

For Respondent: F. E. Caine
Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to Section 25667 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the protest of Motion Picture Financial Corporation to proposed assessments of additional franchise tax in the respective amounts of $686.68, $515.64, $691.68, $978.24 and $1,831.19 for the taxable years 1950 through 1954, inclusive.

Appellant was a Delaware corporation which operated in California from May 20, 1949 to June 30, 1955. It was controlled by Robert L. Lippert and engaged in financing the production of motion pictures by companies owned or controlled by him.

Prior to the incorporation of Appellant it had become increasingly difficult to obtain adequate direct financing of these productions from banks. Appellant was organized and capitalized through the sale of stock after it was determined that a state bank would then lend the necessary funds to it. Under the plan worked out with the bank, Appellant made loans of its own capital, as well as funds which it borrowed from the bank, to the production companies. It received interest bearing notes and first chattel mortgages on the pictures to be produced. The loan agreements also provided that Appellant would share in the profits.. Appellant gave the bank its own notes, secured by the notes and mortgages of the production companies, as security for funds borrowed from the bank. The total of notes payable by Appellant to the bank averaged approximately $136,000 at the end of each year and the total of notes receivable by Appellant from the production companies averaged approximately $342,000 at the

end of each year. Appellant engaged in no activities other than those described herein.

The only question involved in this appeal is whether Appellant was properly classified as a financial corporation, taxable at the rate applicable to banks and financial corporations under Section 23186 of the Revenue and Taxation Code (formerly Section 4a of the Bank and Corporation Franchise Tax Act).

The term "financial corporation" is not defined in the Code. It has been held, however, that there are two tests which must be met before a corporation may be classified as a financial corporation for purposes of the taxing statute. (1) It must deal in money as distinguished from other commodities (Morris Plan Co. v. Johnson, 37 Cal. App. 2d 621) and (2) it must be in substantial competition with national banks (Crown Finance Corp. v. McColgan, 23 Cal. 2d 280).

It is obvious that Appellant did deal in money. The core of the dispute, accordingly, is whether the Appellant was in competition with national banks. The Franchise Tax Board contends that it was because national banks do make loans to motion picture production companies. Appellant argues that national banks would not have made loans in the amounts which it did and that this was the reason for its formation. It also points out that it was not engaged in the general financing of motion picture production but only in financing productions of companies controlled by Robert Lippert.

We believe that Appellant must be regarded as having engaged in competition with national banks. The fact that a bank might not have lent a production company as much money as Appellant did is immaterial. In Crown Finance Corp. v. McColgan (supra) the court considered a similar argument and stated, at page 287:

> "It is not logical to say that where two concerns are engaged in trading in a similar commodity (money and conditional sales contracts in the instant case) they are not in competition because one offers more favorable terms or prices than the other."

Likewise, it is not logical to say that Appellant was not in competition with national banks because Appellant offered more of the same commodity with less security than would national banks.

Nor is it material that Appellant did not engage in the general financing of motion picture production. It is unnecessary to a finding of substantial competition that a

corporation be in competition with national banks as to all types of loans or as to all possible borrowers. In The Morris Plan Co. v. Johnson (supra), the court stated, at page 623:

> "Competition ... does not mean that there should be a competition as to 'all phases of the business of national banks . . . . It is enough as stated if both engage in seeking and securing in the same locality capital investments of the class now under consideration which are substantial in amount, ... even though the competition be with some, but not all, phases of the business of national banks, or it may arise from the employment of capital invested by institutions or individuals in particular operations or investments like those of national banks. (Emphasis added.) (State of Minnesota v. First National Bank, 273 U.S. 561 (47 Sup. Ct. 468, 71 L. Ed. 774).)' Ward v. First Nat. Bank of Hartford, 225 Ala. 10 (142 So. 93, 95, 96).)"

We conclude that Appellant was a corporation dealing in money in substantial competition with national banks and was properly classified as a financial corporation for purposes of taxation.

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 25667 of the Revenue and Taxation Code that the action of the Franchise Tax Board in denying the protest of Motion Picture Financial Corporation to proposed assessments of additional franchise tax in the respective amounts of $686.68, $515.64, $691.68, $978.24 and $1,831.19 for the taxable years 1950 through 1954, inclusive, be and the same is hereby sustained.

Done at Sacramento, California, this 22nd day of July, 1958, by the State Board of Equalization.

George R. Reilly, Chairman

J. H. Quinn, Member

Robert E. McDavid, Member

Paul R. Leake, Member

_____, Member

ATTEST: Dixwell L. Pierce, Secretary