BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)
)
CITRUS BELT SAVINGS AND LOAN ASSOCIATION)
and RIVERSIDE SAVINGS AND LOAN ASSOCIATION)

For Appellants: Ross, Landis, & Pauw, Certified Public Accountants

For Respondent: Burl D, Lack, Chie-f Counsel; John S. Warren, Associate Tax Counsel.; and A. Ben Jacobson, Associate Tax Counsel

O P I N I O N

These appeals are made pursuant to Section 26077 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying in part the claims of Citrus Belt Savings and Loan Association for refund of franchise tax in the amounts of $622.43, $773.95 and $817.32 for the income years 1953, 1954 and 1955, respectively, and in part the claims of Riverside Savings and Loan Association for refund of franchise tax in the amounts of $782.95, $842.43 and $1,085.64 for the income years 1953, 1954 and 1955, respectively,

Appellants are incorporated to conduct the business of receiving and lending money in accordance with Sections 5000 et seq. of the Financial Code. Under provisions of Sections 5550 and 5553, Appellants must procure annual licenses from the Savings and Loan Commissioner prior to transacting any business in this State and the commissioner cannot issue such licenses until Appellants pay "the license fee computed as an annual assessment" as provided in Sections 5300-5304. Section 5300 provides:

> "To meet the salaries and expenses provided for in this division [Savings and Loan Association Law], for the payment of which no provision is otherwise made, the commissioner shall require every association licensed by him or coming under his supervision to pay in advance to him, prior to the issuance of any license, its

> pro rata share of all such salaries and expenses as estimated by the commissioner for the ensuing year."

The exact provisions of Sections 5301-5304 are not here material, In compliance with these sections Appellant, Citrus Belt Savings and Loan Association, paid the commissioner the amounts of **$633.35**, $841.26 and $885.52 during the income years 1953, 1954 and 1955, respectively, and Appellant, Riverside Savings and Loan Association, paid the amounts of $851.04, $915.68 and $881.69 during theincome years 1953, 1954 and 1955, respectively.

As financial corporations Appellants are subject to the annual franchise tax imposed by Section 23183 et seq. of the Revenue and Taxation Code. In the computation of that tax Appellants are allowed certain offsets under Section 23184 as follows:

> "Financial corporations may offset against the franchise tax the amounts paid during the income year to this State or to any county, city, town, or other political subdivisions of the State as personal_ property taxes, or as license fees or excise taxes for the following privileges:
>
> (a) Operating as personal property brokers or brokers as defined in the Personal Property Brokers Act.
>
> (b) Operating motor vehicles under Part 5 of this division [Vehicle License Fee Law].
>
> (c) Engaging in the business of loaning money, advancing credit, or loaning credit or arranging for the loan of money or advancing of credit or loaning of credit.
>
> (d) Storing, using or otherwise consuming in this State of tangible personal property by savings and loan associations,
>
> The tax on financial corporations after the allowance of offset shall not be less than 4 percent of its

> net income for the preceding income year nor less than the minimum tax of twenty-five dollars ($25)."

In their returns for the income years in question, Appellants claimed as deductions the amounts paid to the Savings and Loan Commissioner; later they filed claims for refund on the ground that the payments to the commissioner qualified under subdivision (c) of Section 23184 as offsets against the annual franchise tax.

The Franchise Tax Board has taken the position that "the license fee computed as an annual assessment" which Appellants were required to pay under the provisions of the Financial Code is not one of the "license fees" enumerated in Section 23184 of the Revenue and Taxation Code; To construe Section 23184 as Appellants have construed it, the Franchise Tax Board argues, would result in the imposition of a lighter tax burden upon savings and loan associations than upon banks, which the Legislature did not intend and which, in so far as national banks are concerned, Federal legislation does not permit. (See 12 U.S.C.§548.)

We decided on July 7, 1942, in the Appeal of Mutual Building and Loan Association of Fullerton, that a similar result would attend such a construction of Section 4(2) of the Bank and Corporation Franchise Tax Act, predecessor of Section 23184; so we held there that Section 4(2) of the aforesaid act could not be construed as authcriaing Appellant therein to include in its offset an amount, also called a "license fee," paid by it to meet its pro rata share of the expenses of administering the Buiiding and Loan Association Act, the predecessor of the Savings and Loan Association Law. We have the same question before us here as was decided in the Appeal of Mutual Building and Loan Association of Fullerton, unless the offset provision in Section 23184 is materially different from the previous offset provision in Section 4(2) which provided:

> "Each such financial corporat ion shall be entitled to an offset against said franchise tax, in the manner hereinafter provided, in the amount of taxes and licenses, other than taxes upon its real property and other than taxes imposed by this act paid to this State or to any county, city and county, city, town or other political subdivision of the State; provided, however, that the

> tax on such financial corporation after the allowance of offset shall not be less than four per centum of its net income for the preceding fiscal or calendar year or less than twenty-five dollars. "

Appellants point out that Section 23184 of the Revenue and Taxation Code now contains more precise language than its predecessor in that it refers to "license fees" rather than to "licenses" and it specifically describes in subdivision (c) the business in which Appellants are engaged. With this added precision, Appellants contend that the plain intent of the Legislature is shown so that we need look no further in determining whether the offset in question is allowable, In the alternative, Appellants contend that our previous decision should be overruled because the Legislature originally intended to allow such an offset.

A comparison of the language in Section 23184 with the corresponding language in Section 4(2) does not indicate that the Legislature has intended to make a change in the law in so far as it pertains to the issue in question in these appeals, The present language provides that the amounts paid as license fees or excise taxes, if they are to be offset against the franchise tax, must have been paid for the privilege of engaging in specified business activities, Thus, the issue here involved is within the scope of our decision in the Appeal of Mutual Building and Loan Association of Fullerton. Enlarging upon that opinion, from the standpoint of present Section 23184, will serve to demonstrate why a similar conclusion must be reached here.

Privileges the same as or comparable to those specified in Section 23184 may be exercised by banks in this State without payment of any license fees or excise taxes other than the franchise tax itself. This is so because the banks pay the franchise tax "in lieu of all other taxes and licenses, State, county, and municipal, upon the said banks except taxes upon their real property." (Section 23182 of the Revenue and Taxation Code.)

It is evident that the Legislature has sought in Section 23184, as in the predecessor Section 4(2), to equalize the total tax burden on financial corporations and banks by allowing the former to offset against their franchise tax those taxes and licenses which banks are not required to pay. As stated by the California Supreme Court in H.A.S. Loan Service, Inc. v. McColgan, 21 Cal, 2d 518, 521:

> "The tax system is designed to eliminate inequalities in the tax burdens imposed upon business corporations and banks, Financial corporations are classed with banks both national and state in order that the tax burden they must bear shall not be less than that of banks, and thus in harmony with the federal statute. (12 U.S.C.A. §548.)"

Aside from the taxing system, state banks and savings and loan associations are subjected to comparable regulation by the State.

> "It is apparent from an examination of the statutes that the powers of the superintendent of banks and the Commissioner of Building and Loan Associations are strikingly similar. Evidently the legislature was of the opinion that a fundamental similarity in the two types of institution justified similar supervision by the state." North American Building and Loan Association v. Richardson, 6 Cal. 2d 90, 101.

It is significant that state banks are required to pay an annual assessment to the Superintendent of Banks, pursuant to Section 270 of the Financial Code, to meet the expenses of the State--Banking Department. And if they fail to pay the assessment their certificate of authority to conduct a banking business may be cancelled, (Section 273 of the Financial Code.) This assessment cannot be regarded as a license fee for the privilege of engaging in the business of loaning money, as specified in Section 23184, since banks pay the franchise tax "in lieu of" all other licenses. Yet this assessment is in substance the same in all respects as "the license fee computed as an annual assessment" which Appellant must pay to the Savings and Loan Commissioner to meet the salaries.and expenses provided for in the Savings and Loan Association Law. It would be inconsistent with the intent of the Legislature to allow an offset of the latter, while banks must pay the former. The Legislature did not intend to impose a lighter tax burden on savings and loan associations,

> There is a well recognized distinction between a fee which is incidental to the regulation of a business and a fee which is exacted as a revenue measure for the privilege

of engaging in a business, Agnew v. City of Los Angeles, 51 Cal, 2d 1; In re Galusha, 184 Cal. 697; City of Los Angeles v. Los Angeles Independent Gas Co., 152 Cal. 765, City of San Mateo v. Mullin, 59 Cal. App. 2d 652. We believe that the distinction applies to the matter before us. It is clear that the above-mentioned fees which are charged to banks and to savings and loan associations stand together as incidental to regulation of the businesses. In our opinion, the payments made by the Appellants are not within the meaning of Section 23184, license fees for the privilege of engaging in the business of loaning money.--/

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 26077 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying in part the claims of Citrus Belt Savings and Loan Association for refund of franchise tax in the amounts of $622.43, $773.95 and $817.32 for the income years 1953, 1954 and 1955, respectively, and in part the claims of Riverside Savings and Loan Association for refund of franchise tax in the amounts of $782.95, $842.43 and $1,085.64 for the income years 1953, 1954 and 1955, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 16th day of December, 1959, by the State Board of Equalization.

Paul R. Leake, Chairman

George R. Reilly, Member

John W. Lynch, Member

Richard Nevins, Member

_____, Member

ATTEST: Dixwell L. Pierce, Secretary