



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
CONSOLIDATED COPPERSTATE LINES)

Appearances:

For Appellant: John C. Allen, Attorney at Law
For Respondent: Crawford H. Thomas, 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 on the protests of Consolidated Copperstate Lines to proposed assessments of additional franchise tax in the amounts of \$1,196.07 and \$1,292.30 for the income years 1950 and 1951, respectively.

The question presented is whether bonuses paid to Appellant's officers, in addition to their salaries, for the years 1950 and 1951 should be allowed as deductions for business expenses within Section 24121(a)(1) of the Revenue and Taxation Code (now Section 24343). Section 24121(a)(1) included the following expenses as deductible:

"All the ordinary and necessary expenses paid or incurred during the income year in carrying on business, including a reasonable allowance for salaries or other compensation for personal services actually rendered...."

Appellant is a California corporation, engaged in the trucking business, with its headquarters office in Los Angeles. It has terminals at Los Angeles, California, and at Phoenix and Tucson, Arizona. During the years in question, its corporate stock was owned 50% by Horace W. Steele, its president, and 50% by Service Tank Lines, another trucking corporation. The stock of Service Tank Lines was owned 50% by C. G. Allen, vice-president of Appellant, and 50% by his brother, W. B. Allen, secretary-treasurer of Appellant. The bonuses paid these officers are here in question.

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Mr. Steele and the Allen brothers assumed control of Appellant corporation and became its officers in 1941. All three had considerable experience in the transportation business. Mr. Steele is a resident of Arizona and did not, during the years in question, perform services for Appellant in California. He devoted time to the company's interests in Arizona. The Allen brothers maintained their offices in Los Angeles in space of Service Tank Lines. They devoted time to the company's interests in California. None of these officers gave their full time to Appellant. Each had other business interests. The exact amount of time spent by the officers in 1950 and 1951 for Consolidated Copperstate Lines is not disclosed by the record. It is stated that they gave all necessary time to fulfill their responsibilities to it. Appellant also had a full-time, general manager who was employed at a salary of \$19,500 for 1950 and \$27,000 for 1951.

Appellant's gross income, net income, compensation paid to the officers and general manager and dividends from 1947 through 1951 are shown by the following table:

<u>YEAR</u>	<u>GROSS INCOME</u>	<u>NET INCOME</u>	<u>COMPENSATION</u>	<u>DIVIDENDS</u>
1947 1948	\$231,243 309,997	\$ 131,113 84,162	\$ 36,000 56,000	\$ 0 0
1949	315,502			0
1950	429,371	100,400	72,750	0
1951	482,052	150,190	103,000 132,280	13,000

A further tabulation shows the salary and bonuses paid for 1950 and 1951:

	<u>YEAR OF 1950</u>			<u>GENERAL MANAGER</u>
	<u>H. W. STEELE</u>	<u>C. G. ALLEN</u>	<u>W. B. ALLEN</u>	
SALARY	\$14,500	\$14,500	\$14,500	\$19,500
BONUS	20,000	10,000	10,000	-0-
TOTAL	<u>\$34,500</u>	<u>\$24,500</u>	<u>\$24,500</u>	<u>\$19,500</u>
	<u>YEAR OF 1951</u>			
SALARY	\$18,000	\$18,000	\$18,000	\$27,000
BONUS	24,560	13,360	13,360	-0-
TOTAL	<u>\$42,560</u>	<u>\$31,360</u>	<u>\$31,360</u>	<u>\$27,000</u>

Respondent, Franchise Tax Board, has allowed as reasonable business expenses the full amounts of salaries paid but has disallowed as deductions the bonuses paid as being in excess of a reasonable allowance for compensation for personal services.

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There is no fixed rule by which a reasonable allowance for compensation can be determined. What is reasonable is dependent upon the facts and circumstances of each particular case. (Mansfield Mfg. Co. v. Commissioner, 178 Fed. 2d 115; Gem Jewelry Co., Inc. v. Commissioner, 165 Fed. 2d 991, cert. den. 334 U. S. 846; Miller Mfg. Co., Inc. v. Commissioner, 149 Fed. 2d 421; J. D. Van Hooser & Co. v. Glenn, 50 Fed. Supp. 279.) The burden is upon Appellant to prove that it is entitled to the deductions (Botany Worsted Mills v. United States, 278 U. S. 282; L. & C. Mayers Co., Inc. v. Commissioner, 131 Fed. 2d 309, cert. den. 318 U. S. 773; National Weeklies, Inc. v. Commissioner, 137 Fed. 2d 39.)

A comparison of the amounts paid Appellant's officers with amounts paid by similar concerns is highly relevant here. Respondent found from a survey of a representative group of trucking firms that the highest salary paid a president of a much larger company who devoted full time to the business was \$29,000; a full-time vice-president, \$20,000; and a secretary, \$12,000. It found that trucking firms do not ordinarily employ a general manager. In view of such comparison, to which Appellant has offered no contrary evidence, it is significant that Appellant had a well-paid, full-time general manager who did not share in the bonuses as did the three other officers with direct and indirect stockholdings.

Payment of compensation in a closely-held corporation in proportion to stockholdings is suggestive of a distribution of corporate earnings on a basis other than as a reasonable allowance for personal services actually rendered. (Am-Plus Storage-Battery Co. v. Commissioner, 35 Fed. 2d 167; Marble & Shattuck Chair Co. v. Commissioner, 39 Fed. 2d 393; Lincoln Can Mfg. Corp., T. C. Memo. Dkt. No. 5506, March 28, 1946.) The burden is on the taxpayer to remove any stockholder sinecure tinge. (Heil Beauty Supplies, Inc. v. Commissioner, 199 Fed. 2d 1193.) Equivocal statements such as "All necessary time was devoted" are not of material assistance in determining the reasonableness of the compensation and do not satisfy the burden of proof upon the taxpayer. (Miles-Conley Co., Inc. v. Commissioner, 173 Fed. 2d 958.)

An additional factor which here suggests that the bonus payments were actually rendered upon the basis of stockholding rather than as reasonable compensation for services is the dividend pattern of Appellant. The company was quite profitable. From 1941 to 1951 its surplus increased from \$53,000 to \$469,568. The only dividend distributed was \$13,000 in 1951. A comparison

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of this relatively small amount with the bonus payments is further suggestive of a corporate profit distribution based upon stockholdings. (Golden Construction Co., Inc., T. C. Memo., Dkt. No. 48456, Dec. 16, 1954, aff'd 228 Fed. 2d 637; Manniello Bros., T. C. Memo., Dkt. No. 26218, Feb. 6, 1952.)

Appellant argues that as an interstate carrier it filed detailed quarterly reports with the Interstate Commerce Commission and this Commission has never indicated that the salaries paid to the officers were excessive. Assuming that the Interstate **Commerce** Commission considered for their purposes that the amounts paid were reasonable, any questions of tax liability are not determined thereby. (Old Colony Railroad Co. v. Commissioner, 284 U. S. 552; Kansas City Southern Ry. Co. v. Commissioner, 52 Fed. 2d 372, cert. den., 284 U. S. 676.)

Viewing all the relevant factors, it is our conclusion that Appellant has not carried the burden of showing that the bonus payments were reasonable allowances for compensation for personal services. The Franchise Tax Board correctly disallowed such bonus payments for 1950 and 1951 as deductions.

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 on the protests of Consolidated Copperstate Lines to proposed assessments of additional franchise tax in the amounts of \$1,196.07 and \$1,292.30 for the income years 1950 and 1951, respectively, be and the same is hereby sustained.

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Done at Sacramento, California, this 13th day of
September, 1960, by the State Board of Equalization.

_____, Chairman

Richard Nevins, Member

Geo. R. Reilly, Member

Paul R. Leake, Member

_____, Member

ATTEST: Dixwell L. Pierce, Secretary