



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
A, **K. THANOS CO,**)

For Appellant: **L. H. Penney & Co.,** Certified Public Accountants

For Respondent: **Burl D. Lack,** Chief Counsel;
Israel Rogers, Junior 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 protests against proposed assessments of additional franchise tax in the amounts of **\$116.61, \$117.64, \$142.00 and \$151.27** for the income **years 1954, 1955, 1956 and 3357,** respectively.

Appellant was incorporated in California in 1950. **Its** principal business was selling liquor at wholesale to bars and restaurants in the **San** Francisco area. Appellant's stock was owned equally by **Andrew K. Thanos** and his wife, **Mr. Thanos** was the president and principal salesman of the corporation.

Appellant has never paid a formal dividend in cash or property other than its own stock. Its earned **surplus** and undivided profits were in the amounts of **\$39,911.35, \$90,460.66, \$138,152.56 and \$175,974.35** at the close of the respective years in question,

In order to promote sales **Mr. Thanos** visited his customers' establishments and entertained the patrons by purchasing drinks and dinners for **them.** He **also purchased** his own dinners at these locations, seldom dining at **his** own home. Some of the persons he entertained were 'his close friends in addition to being his customers. These expenses were paid by appellant and deducted by it on its tax returns as selling expenses.

Appellant supplied **Mr. Thanos** with a Cadillac automobile which he used for both business and personal affairs. The entire expense of operating the automobile was paid by appellant and was deducted on its returns.

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During the years involved, Mr. Thanos took business trips on which he was accompanied by his wife. Appellant paid the expenses attributable to Mrs. Thanos as well as those attributable to her husband and took all of the expenses as deductions,

For each of the years in question, respondent has disallowed as deductions \$1,200 of the selling expenses and \$600 of the automobile expenses. In addition it has disallowed part of the travel expenses in the amounts of \$458.36, \$356.17, \$1,116.19 and \$1,147.71 for the respective years. All of the amounts disallowed were considered by respondent to represent personal rather than business expenses and were treated as nondeductible dividends paid to the stockholders,

Section 24343 (formerly 24121a) of the Revenue and Taxation Code permits the deduction of all ordinary and necessary business expenses. Deductions, however, are a matter of legislative grace and the burden is on the taxpayer to prove that the expenses are within the terms of the statute. (New Colonial Ice Co. v. Helvering, 292 U.S. 435 [54 S. Ct. 788, 78 L. Ed. 1348].)

In connection with the claimed selling expenses, appellant argues that respondent should at most disallow the amounts Mr. Thanos would normally spend for a luncheon each day and that a reasonable amount for a luncheon is less than \$1.00. As to the automobile expense, appellant states that Mr. Thanos lives six miles from his place of business and that at 10 cents per mile for 300 days, the disallowance should be no more than \$360 a year. Appellant also alleges with respect to the traveling expenses that it was mandatory that Mrs. Thanos accompany her husband to conventions and on visits to suppliers because "It is common knowledge that at these affairs the 'business deals' are put together at ostensibly social functions."

The foregoing statements can only be characterized as speculative arguments. There is no evidence from which we can conclude that the cost of Mr. Thanos's lunches alone should be disallowed nor can we accept as reasonable a luncheon cost of less than \$1.00; there is no evidence that the personal use of the automobile was limited to driving to work; and there is no evidence that it was in fact necessary from a business standpoint that Mrs. Thanos accompany her husband on his trips. Although her presence may have been helpful, that is not sufficient to permit a deduction for her expenses. (Alabama-Georgia Syrup Co., 36 T.C. No. 76; Challenge Manufacturing Co., 37 T.C. No. 65,)

Citing Rodgers Dairy Co., 14 T.C. 66, appellant argues that because the personal use of the automobile was negligible the entire expense should be allowed as a deduction. While the Tax Court did find that the personal use for some of the years there involved was so negligible that it should be disregarded, there is no showing here that the personal use by Mr. Thanos was inconsequential. The court found that for another

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year 10 percent of the expenses were **includible** in the income of the corporate officer who used the car. The corporation was allowed to deduct all of the expenses only because the commissioner himself had treated the use as additional compensation to the officer.,

Appellant has failed to establish that any of the disallowed expenses were for ordinary and necessary business purposes rather than for the personal benefit of the stockholders. In the absence of a showing that appellant intended the disbursements **as** compensation for services, they must be regarded as nondeductible distributions of the steadily increasing corporate earnings. (Challenge Manufacturing Co., 37 T.C. No. 65.)

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 protest of A. K. Thanos Co. against proposed assessments of additional franchise tax in the amounts of **\$116.61**, \$117.64, \$142.00 and \$151.27 for the income years 1954, 1955, 1956 and 1957, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 13th day of November, 1962, by the State Board of Equalization.

_____	, Chairman
<u>John W. Lynch</u>	, Member
<u>Paul R. Leake</u>	, Member
<u>Richard Nevins</u>	, Member
_____	Member

ATTEST: Dixwell L. Pierce , Secretary