

BEFORE THE STATE BOARD OF EQUALIZATION OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of WINTER MORTGAGE COMPANY

Appearances:

For Appellant: Harvey A. Harkness and Bert A. Lewis,

Attorneys at Law

For Respondent: Burl D. Lack, Chief Counsel;

Crawford H. Thomas, Associate Tax Counsel

OPINION

This appeal is made pursuant to section 26077 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Winter Mortgage Company for refund of franchise tax in the amounts of \$6,986.78, \$8,215.75, \$8,811.12, \$8,329.53 and \$7,231.92 for the income years ended December 31, 1955, 1956, 1957, 1958 and 1959, respectively.

Appellant was incorporated in California on August 15, 1946, and has been engaged in the business of acting as a "loan correspondent" for New York Life Insurance Company, Equitable Life Insurance Company Of Iowa, and Massachusetts Mutual Life Insurance Company.

During the years on appeal, appellant made loans which were secured by first mortgages or first deeds of trust on improved real estate. The loans made by appellant may be classified as government insured "FHA"or "VA" loans and conventional or uninsured loans. A substantial number of such loans were similar to real estate loans made by national banks.

Within a period of from one to three months the loans were assigned, without recourse, to one of the insurance companies. Charges to the insurance companies in excess of the amounts of the loans are characterized by apnellant as "commissions." After the loans were transferred, appellant serviced them by collecting installments and providing other services, such as making certain that the underlying properties were kept insured and that taxes upon them were paid,

Appellant made no loan without first securing a written commitment by one of the insurance companies to purchase the loan.

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Thereafter, appellant made the loan in its own name, using its own capital or funds borrowed from banks, Between the time that a loan was closed and the time it was assigned to *one* of the life insurance **companies**, the loan papers were pledged with a bank to secure funds which appellant employed to close other loans upon which it received commitments from insurance companies. Appellant-serviced only those loans originally made by it.

Appellant had the following amounts of capital and surplus at the end of the respective years:

1955 - \$189,651.73 1956 - 203,107.20 1957 - 244,424.08 1958 - 283,168.58 1959 - 320,434.00

The dollar volume of loans sold to insurance companies was as follows during the respective years:

1955 - \$15,757,773 1956 - 10,592,791 1957 - 10,876,507 1958 - 8,410,558 1959 - 10,750,320

At the end of each year appellant held the following amounts of loans made by it and not yet sold to the insurance companies:

1955 - \$ 850,700 1956 - 279,295 1957 - 871,700 1958 - 1,904,000 1959 - 2,267,850

The following is an analysis of the gross income of appellant:

1955 1956 1958 1957 1959 GROSS INCOME \$27,386.91 \$ 26,781.04 \$ 37,071.19 \$ 57,411.44 \$ 68,836.31 Interest Income Commissions on 144,146.21 114,148.06 100,951.49 Loans 79,038.91 65,530,54 Commissions on 10.180.98 22,155.72 26,869.18 19,306.81 Insurance 28,391.57 292,111,72 (5.46) Service Fees Miscellaneous 314,404.07 370,076.30 345,941.69 337,248.81 34.12 872.00 95<u>.8</u>0 (111.17)Rental Income 11,320.00 \$173,823.36 \$477,523.01 \$502,236.47 Total \$501,587.68 \$545,027.00

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Appellant's net interest income, after deducting interest paid on amounts which it borrowed to make the loans, was \$4,722.23, \$3,465.01, \$5,748.57, \$13,600.84 and \$11,911.00 for each of the respective years.

In view of the above facts, the Franchise **Tax** Board has taken the position that for the years involved appellant was a financial corporation within the meaning of section 23183 of the Revenue and Taxation Code and was subject to the rate of tax imposed upon such corporations. The position of the Franchise Tax Board is based upon the conclusion that appellant was in competition with national banks.

Appellant contends that it was not, and is not now, a financial corporation within the meaning of section 23183. It also argues that the Franchise Tax Board may not retroactively change an established administrative practice contrary to that board's present position. In addition, appellant points out that in <u>Winter Investment Co.v.</u> Johnson, Sacramento Superior Court, No. 57305, decided Oct. 1939, the question of whether appellant's predecessor in interest was a financial corporation during the income years 1933, 1934 and 1935 was decided in the negative,

Since the <u>Winter Investment</u> case did not involve the same years as are now before us, the decision is not res judicata, (Rev. & Tax. Code Sec. 26424.) Moreover, it is noted that the decision was based on a finding that the loans were not of the type made by national banks because they were longer time loans of a smaller percentage of the value of the property. A subsequent decision by the California Supreme Court makes it apparent that such differences in the terms of the loans are not material to the question of whether the lender is competing with national banks. (Crown Finance Corp, v. McColgan, 23 Cal. 2d 280 (144 P.2d 331).)

The remaining questions here presented were considered in the <u>Appeal of Stockholders Liquidating Corp</u>,, this day decided. The corporation there involved operated substantially the same as this appellant. Based upon the reasons set forth in that decision, we hold that appellant was properly classed as a financial corporation.

ORDER

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

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IT IS HEREBY ORDERED, ADJUNCED AND DECREED, pursuant to section 26077 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Winter Mortgage Company for refund of franchise tax in the amounts of \$6,986.78, \$8,214.75, \$8,811.12, \$8,329.53 and \$7,231.92 for the income years ended December 31, 1955, 1956, 1957, 1958 and 1959, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 5th day of February, 1963, by the State Board of Equalization.

John W. Lynch	, Chairman
Geo, R. Reilly	, Member
Paul R. Leake	, Member
Richard Nevins	, Member
	Member

ATTEST: ____Dixwell L. Pierce ___, Secretary