

Appeal Of Winter Mortgage Company

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 Appellant-serviced only those loans originally made by it.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:

	<u>1955</u>	<u>1956</u>	1957	<u>1958</u>	<u>1959</u>
<u>GROSS INCOME</u>					
Interest Income	\$27,386.91	\$ 26,781.04	\$ 37,071.19	\$ 57,411.44	\$ 68,836.31
Commissions on Loans	144,146.21	114,148.06	100,951.49	79,038.91	65,530.54
Commissions on Insurance	10,180.98	22,155.72	26,869.18	19,306.81	28,391.57
Service Fees	292,111.72	314,404.07	337,248.81	345,941.69	370,076.30
Miscellaneous	(5.46)	34.12	95.80	(111.17)	872.00
Rental Income	-	-	-	-	11,320.00
Total	<u>\$473,823.36</u>	<u>\$477,523.01</u>	<u>\$502,236.47</u>	<u>\$501,587.68</u>	<u>\$545,027.00</u>

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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 Winter Investment Co. v. 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 Winter Investment 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 Appeal of Stockholders Liquidating Corp., 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.

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,

