



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)
ARC INVESTMENT CO.)

Appearances:

For Appellant: Nathan H. Snyder, Attorney at Law

For Respondent: Burl D. Lack, Chief Counsel

O P I N I O N

These appeals are made pursuant to section 25667 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of Arc Investment Co. against proposed assessments of additional franchise tax in the amounts of \$630.25, \$1,142.83, \$1,601.35, \$1,696.56 and \$1,412.38 for the income years ended July 31, 1954, 1955, 1956, 1957 and 1958, respectively,

The sole question before us is whether appellant is a financial corporation and thus subject to the rate of tax provided in sections 23183 et seq. of the Revenue and Taxation Code.

Appellant is engaged in purchasing from garages installment notes given to the garages by their customers for automobile repairing. Appellant's office is located in a section of Los Angeles where the economic level is low and the makers of the notes live in that area. The notes are acquired by appellant at discounts of from 24 percent to 35 percent without recourse to the garages. Although the terms of each note authorize the creditor to take the automobile involved in case of default, the debtor's interest in the automobile is usually so encumbered that the authorization is of no value. For all practical purposes, the notes are unsecured.

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The volume of business done by appellant is indicated by the following table of receivables outstanding at-the end of **each income** year:

<u>Year</u>	<u>Receivables Outstanding</u>
1954	\$373,523.53
1955	398,631.31
1956	585,624.67
1957	700,625.17
1958	473,511.94

Within the meaning of section 23183 of the Revenue and Taxation Code, a **financial** corporation is a corporation **which** (1) deals in money as distinguished from other commodities and (2) is in substantial competition with national banks. (Crown Finance Corp. v. McColgan, 23 Cal. 2d 280. [144 P.2d 331]; Morris Plan Co. v. Johnson, 37 Cal. App. 2d 621 [100 P.2d 493].)

There is no doubt that appellant deals in money; the crucial consideration here is whether appellant is in substantial competition with national banks.

Appellant states that the type of paper it handles

...is extremely hazardous in that it is primarily unsecured. It is a very specialized field and is not to be confused with ordinary conditional sales contract and other paper handled by banks and finance companies. The type of paper **being handled** by taxpayer is handled by no **bank** in the country, neither national nor state.

Respondent does not deny the above statement by appellant, but contends (1) **that appellant is** in effect making unsecured loans to the customers of the garages; (2) that national banks make unsecured loans-for various purposes, including automobile repairing; and (3) that where "national banks and private finance companies make loans in the same field, there **is** competition between the two even though the bank **would** not make a particular loan to a particular class of borrowers because of their credit **standing.**"

As authority for the last of the propositions mentioned above, respondent cites Crown Finance Corp. v. McColgan, 23 Cal.

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2d 280 [144 P.2d 331]. That case, however, went only so far as to hold that there is competition with national banks where a finance company deals with a class of persons some of whom have sufficiently high credit standings to interest national banks, **We do not regard the decision as authority for a rule** that there is substantial competition even if none or very few of the persons in the class would be acceptable to national banks **as credit risks.**

In view of the extremely high discount rates on the notes involved, it is apparent that the makers of the notes, the garage customers, are not good credit risks and there is no contention that national banks would loan money to them. **Under these circumstances** we cannot agree that appellant is in **substantial competition** with national banks, even if we assume **that appellant is**, in effect, making unsecured loans to the debtors,

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 Arc Investment Co. against proposed assessments of additional franchise tax in the amounts of \$630.25, \$1,142.83, \$1,601.35, \$1,696.56 and \$1,412.38 for the income years ended July 31, 1954, 1955, 1956, 1957 and 1958, respectively, **be and the same is** hereby reversed.

Done at Sacramento, California, this 18th day of February, 1964, by the State Board of Equalization.

Paul R. Leake, Chairman
John W. Lynch, Member
Richard J. ..., Member
Geoff Spilly, Member
..., Member

ATTEST: W. Freeman, Secretary