64-SBE-017

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA.

In the Matter of the Appeal of)
RIVERSIDE CEMENT COMPANY)

POP Appellant: O'Melveny & Myers and
Clyde E. Tritt, Attorneys at Law

For Respondent: Burl D. Lack, Chief Counsel;
John S. Warren, Associate Tax Counsel

O P I N I O N

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 claims of Riverside. Cement Company for refund of franchise tax in the amounts of $42,419.83 and $70,553.82, both for the taxable year 1953, income year 1952. The larger claim was filed after the smaller claim and includes the amount of the smaller claim.

Appellant is a corporation engaged in the business of manufacturing and selling cement. In connection therewith, it mines extensive amounts of calcium carbonate and shale.

Chapter 1211 of the Statutes of 1953 amended both the Bank and Corporation Tax Law and the Personal Income Tax Law to provide for percentage depletion of calcium carbonate and shale. Section 15 of chapter 1211 provides: "This act shall be applied in the computation of taxes from and after January 1, 1953." The act was approved by the Governor on June 18, 1953, and was filed with the Secretary of State on June 19, 1953.

It should be noted. that the above quoted section 15 applies to both franchise taxes and income taxes. Corporate franchise taxes, of the type to which appellant is subject, are imposed for a given taxable year measured by income of the preceding year, (Rev. & Tax, Code, § 23151.) Income taxes, both corporate and personal, are imposed for a given taxable year upon income of that year. (Rev. & Tax. Code, §§ 23501 and 17041 (formerly 17052).) Returns on each of these taxes

are normally due within less than five months after the close of the year in which the income constituting the measure of the tax is received or accrued, (Rev. & Tax, Code, §§ 18432 and 25401,)

Respondent contends that sectfon I.5 means that the amendment applies only to the computation of taxes on or measured by income earned from and after January 1, 1953. Respondent also urges that if this interpretation is not accepted the amendment is an unconstitutional gift of public money, Appellant contends that the amendment applies to the computation of franchise tax for the taxable year 1953, based on income earned in 1952, and that such an application is not unconstitutional as a gift of public money,

Appellant points out that on other occasions when the Legislature wished a change to commence with a certain income year it has expressly employed the term "income' year, (Stats. 1955, ch. 938, § 36; Stats, 1951, ch. 72, § 34.) But the Legislature has also at times used the term "taxable" year when the change was to commence with a particular taxable year, (Stats., 1952, ch. 10, § 3; Stats. 1935, ch. 353, 6 2.) Thus the omission of any reference to "income" year in section 15 is no more an indication that the amendment was to apply to the taxable year commencing January 1, 1953, than the omission of any reference to "taxable" year is an indication that the amendment was to apply to the income year commencing on that date,

Itis an established principle of statutory construction that when two alternative interpretations are presented, one of which would be unconstitutional and the, other valid, that construction should be chosen which will uphold the validity of the statute, (Estate of Skinker, 47 Cal. 2d 290 [303 P.2d 7453; Estate of Potter, 188 Cal. 55 [204 P. 826].) With this principle in mind, we shall proceed to determine whether the construction advocated by appellant would be unconstitutional, as contended by respondent,

Article IV/section 31 of the California Constitution provides that the Legislature shall not "have power to make any gift ... of any public money ... to any individual ... or ... corporation," Applying this provision, the California courts have-consistently held that legislation reducing or relinquishing a tax after the right to it has vested in the state is unconstitutional. (Estate of Stanford, 126 Cal, 112 [58 P. 4621; Estate of Potter, supra; Estate of Skinker, supra,)

Appellant argues that the right to a franchise tax does not vest in the state until the end of the taxable year, even though the tax is payable within that year, since it may be escaped by ceasing to do busfness and dissolving during the year, Be that as it may, the amendment under consideration applies. to personal and corporate income taxes as well as to franchise taxes, If appellant's interpretation of section 15

of the amendment would be unconstitutional as to any of these taxes, that is sufficient reason to avoid the interpretation if possible,

With respect to personal income taxes, the right of the state vests when payment is due. (Allen v. Franchise Tax Board, 39 Cal, 2d 109[245 P.2d 297].) In the case of a calendar year taxpayer, that date is April 15 of the year following the year in which the income is earned. (Rev. & Tax. Code,, § 18551; Allen v. Franchise Tax Board, supra.) Since the amendmentin question was not enacted until June 1953 it would appear unconstitutional to apply the amendment in reduction of personal income taxes on 1952 income. Yet that.would be the necessary result of appellant's interpretation of section 15 of the amendment.

We recognize that, despite the California constitutional prohibition against gifts of public funds, legislation providing for expenditures designed to achieve a "public purpose" has been held valid. (See, e.g., County of Alameda v. Janssen, 16 Cal, 2d 276, 281 [106 P.2d 11].) We are not persuaded, however, that the required public purpose may be found in legislation which simply extends to a relatively few taxpayers the benefits of percentage depletion.

We conclude that the correct interpretation of section 15, an interpretation which is clearly harmonious with constitutional requirements, is that the Legislature intended to make the initial application of the amendment turn upon the period in which income was earned, extending the benefit of the amendment uniformly to all taxpayers engaged in mining calcium carbonate and shale, with respect to income which they earned commencing January 1, 1953. -It follows that respondent's action In denying the claims for refund should be affirmed.

O R D E R

Pursuant to 'the views expressed in the opinionof the board on file in this matter, and good cause appearing therefor,

Appeal of Riverside Cement Company

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 26077 of the Revenue and Taxation Code, that the action of the Franchise Tax Board In denying the claims of Riverside Cement Company for refund of franchise tax in the amounts of $42,419.83 and $70,553.82 both for the taxable year 1953, Income year 1952, be and the same is hereby sustained.

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

Paul R. Leake, Chairman

John W. Lynch, Member

_____, Member

_____, Member

_____, Member

Attest: _____, Secretary