BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)
)
PONTICOPOULOS, INC.)

Appearances:

For Appellant : Kelvin D. Wilson, Attorney at Law

For Respondent: A. Ben Jacobson, Associate Tax 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 protests of Ponticopoulos, Inc., against proposed assessments of additional franchise tax in the amounts of $631.58, $2,877.18, $7,471.69 and $346.69 for the income years ended June 30, 1957, 1959, 1960, and 1961, respectively.

During the years on appeal, appellant engaged in real estate activities, including investment in large tracts of undeveloped land and ownership and management of commercial and apartment rental properties. It owned 50 percent of the shares of another corporation operating business property and had an interest in a joint venture engaged in property activity. Appellant de-rived its income in part from rents and from gains on the sale of property.

In addition, appellant made loans to affiliated and nonaffiliated realty companies. It also made loans to builders and individuals purchasing homes, which were secured by first deeds of trust. These were primarily F.H.A. loans. As soon as possible the loans were sold to lending institutions and appellant thereafter serviced the loans by collecting payments and performing other, related functions. Appellant received financial service fees as well as interest income from the

activity connected with the first trust deed loans. The number of first trust deed loans for each of the years involved ranged from 63 to 312 and the dollar amount from $1,128,650 to $5,632,000.

In its franchise tax returns, appellant described its principal business activity as "Real Estate Financing," and reported the following mounts of gross income:

	Income Years Ended June 30			
	1957	1959	1960	1961
Interest	$198,104	$123,069	$139,062	$ 95,096
Lenders and Financial Fees	116,831	53,861	42,019	70,270
Rents, etc.	115,179	117,948	109,896	104,034
Capital Gains	614	87,919	240,596	43,032

Appellant paid its franchise taxes at the rate imposed upon corporations other than financial corporations. Respondent, however, determined that appellant was a financial corporation and thus subject to tax at the same rate as banks, with off sets for personal property taxes and certain other taxes and fees which banks do not pay.

Section 23183 of the Revenue and Taxation Code provides, so far as material here, that:

> An annual tax is hereby imposed upon every financial corporation . . . for the privilege Of exercising its corporate francises within this State, according to or measured by its net income, upon the basis of its net income for the next preceding income year at the rate provided under Section 23186 [Section 23186 provides a formula for computing the rate of tax on banks and financial corporations].

The special classification of "financial corporation" in our code was made to comply with a federal statute (Rev. Stat., § 5219, 12 U.S.C.A. § 548), prohibiting discrimination in taxing national banks. (Crown Finance Corp. v. McColgan, 23 Cal. 2d 280 [144 P.2d 331].) In line with the purpose of the classification a financial corporation is considered to be a corporation dealing in moneyed capital and engaged in substantial competition with national banks. (Crown Finance Corp. v. McColgan, supra.)

We believe it is clear that appellant would properly be classed as a financial corporation were it not for the fact that it engaged in activities in addition to those related to lending money. It was recently held in Marble Mortgage Co. v. Franchise Board, *241 Cal. App. 2d ____, that a corporation engaged in making, selling, and servicing loans, much as appellant did, was a financial corporation.

Appellant's argument, however, is that it should not be taxed as a financial corporation because its activities were principally outside the financial field. Relative to this argument, appellant has presented figures classifying most of its assets and income as nonfinancial in nature. On the other hand, it has attributed most of its administrative expenses to the financial side of the business.

On two prior occasions we have rejected contentions similar to that made by appellant. In Appeal of Bankamerica Agricultural Credit Corp., Cal. St. Bd. of Equal., July 7, 1942, the taxpayer made loans on the security of livestock and also engaged extensively in raising and selling livestock. In Appeal of Continental Securities Co., Cal. St. Bd. of Equal., Feb. 3, 1944, the taxpayer, in addition to making real estate loans, operated the Angels Flight Railway Company and received rents from real estate, dividends on large stock investments and commissions on insurance underwriting and other services. According to that taxpayer, "GUT-fifths Gf its manpower was used in conducting nonbanking business.

In holding that the above taxpayers were financial corporations we relied in part upon First National Bank v. Hartford, 273 U.S. 548 [71 L. Ed. 767]; Minnesota v. First National Bank, 273 U.S. 561 [71 L. Ed. 774]; and Morris Plan Co. v. Johnson, 37 Cal. App. 2d 621 [100 P.2d 493]. Language from the latter decision, applying the views of the United States Supreme Court in the interpretation of our statute, demonstrates why appellant must also be treated as a financial corporation:

> Competition within the meaning of section 5219, Revised Statutes of the United States, does not mean there should be a competition as to "all phases of the business of national banks ... section 5219 is violated whenever capital, substantial in amount when compared with the capitalization of national banks, is employed either in a business or by private investors in the same sort of transactions as those in which national banks engaged

*Advance Report Citation: 241 A.C.A. 26.

> and in the same locality in which they do business ... It is enough as stated if both engage in seeking and securing in the same locality capital investments of the class now under consideration which are substantial in amount, . . . even though the competition be with some, but not all, phases of the business of national banks, or it may arise from the employment of capital invested by institutions or individuals in particular operations or investments like those of national banks. [citation]"

We have considered an alternative contention that only the portion of appellant's income which was derived from its financial activities should be taxed at the rate imposed upon financial corporations. Although this alternative is appealing, there is no provision for a segregation of this kind under the controlling statute, section 23183. As stated by two very well qualified authors in the most authoritative article written upon the subject of California's bank tax, a solution such as that suggested by appellant "finds no support in the Act, presents serious accounting and administrative problems and is probably not permitted by section 5219." (Keesling and Traynor, Recent Changes in the Bank and Corporation Franchise Tax Act (1934) 22 Cal. L. Rev. 499, 512.)

We are compelled to the conclusion that appellant was a financial corporation within the meaning of section 23183 of the Revenue and Taxation Code and that, therefore, its entire net income was taxable as provided by section 23186.

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 protests of Ponticopoulos, Inc., against proposed assessments of additional franchise tax in the amounts of $631.58, $2,877.18, $7,471.69 and $346.69 for the income years ended June 30, 1957, 1959, 1960 and 1961, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 1st day of Sacramento, 1966, by the State Board of Equalization.

_____, Chairman

_____, Member

_____, Member

_____, Member

_____, Member

ATTEST: _____, Secretary