BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)
)
STERLING FINANCE CORPORATION OF)
CALIFORNIA)

Appearances:

For Appellant: Robert E. Becker
Certified Public Accountant

For Respondent: Peter S. Pierson
Tax Counsel

O P I N I O N

These appeals are made pursuant to section **26077** of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of Sterling Finance Corporation of California for refund of franchise tax in the amounts of $209.33, **$386.51**, $386.51, and $415.32 for the income years ended June 30, 1963, 1964, 1964, and 1965, respectively.

Appellant Sterling Finance Corporation of California commenced business on January 1, **1963**. Over the years here in question it acquired all the outstanding stock of seven corporations which are engaged in the loan business in Northern California. These subsidiaries acquired most of the funds needed in their business from national banks. However, they were limited by a maximum line of credit from this source of $1,000,000 in the income years ended on June 30, 1963 and 1964, and $1,100,000 in the income year ended June 30, 1965. In addition, the subsidiaries themselves imposed a maximum on their national bank source averaging approximately $57,000 below the above amounts in order to provide a "cushion" for emergencies. Over the income years ended on June 30, 'in 1963, 1964, and 1965, the subsidiaries' average debt to 'national banks was $887,000, $913,000, and $1,047,000, respectively. The balance of the funds required by the subsidiaries was obtained either from their initial capitalization or from unsecured loans made by appellant.

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Most of appellant's loans to its subsidiaries were made at the time of their acquisition. Appellant 'srecords statethat notes receivable from its subsidiaries totalled approximately $135,000, $178,000, and $246,645 for the income years ended on June 30, in 1963, 1964, and 1965, respectively. Repayments for these income years totalled $12,400, $79,500 and $55,996, respectively, and interest earned totalled $5,839, $12,321, and $18,901, respectively. Aside from making loans to its subsidiaries, appellant's only other significant function was to provide these corporations with some supervisory services. The fees generated by this function equalled $11,239 and $29,948 for the income years ended on June 30, in 1964 and 1965. Respondent Franchise Tax Board assessed appellant as a financial corporation under section 23183 of the Revenue and Taxation. Code. Appellant paid the tax and filed claims for refund on the ground that it should be assessed at the rate applicable to general corporations. The sole issue of this case is whether appellant was properly classified as a financial corporation.

The financial corporation classification was created by the Legislature to comply with the federal statute (12 U.S.C.A. § 548) prohibiting discrimination between national banks and other financial corporations. (Appeals of The Diners' Club, Inc., Cal. St. Bd. of Equal., Sept, 1, 1967.) The courts have held that a financial corporation is one which deals in moneyed capital, as opposed to other commodities, (The Morris Plan Co. v. Johnson, 37 Cal. App. 2d 621 [100 P.2d 493]), and which is in substantial competition with national banks. (Crown Finance Corp v. McColgan, 23 Cal. 2d 280 [144 P.2d 3313.) 'Since loan funds are classifiable as moneyed capital, it is only the latter test which is relevant here.

It is clear from the facts stated above that appellant placed itself in competition with national banks when it made loans to its subsidiaries, National banks had already supplied these corporations with considerable funds. However, these amounts were less than the maximum credit line available to the subsidiaries. Therefore, when appellant subsequently made loans to the subsidiaries, these loans were in competition with funds available from the national banks to the extent of the difference between the maximum creditline extended by these banks and the amounts which they had actually supplied. This conclusion is not altered by the fact that appellant rendered some nonfinancial supervisory services (Appeals of Croddy Corporation, Cal. St. Bd. of Equal., Sept. 1, 1966), or by the fact that those loans were not made available to the public generally, (Appeal of Motion Picture Financial Corporation, Cal. St. Bd. of Equal., July 22, 1958.)

Appellant contends that the above competition was not substantial. The average competitive loans made by appellant, as determined above, equalled $113,000, $87,000, and $53,000 for the income years ended June 30, 1963, 1964, and 1965, respectively. Appellant argues that these competitive amounts must be limited further by the average cushion maintained by the subsidiaries for emergencies* We do not agree, This cushion represented a self-imposed limitation by the subsidiaries of funds that were readily available from national banks. Also, there is no apparent reason why this cushion could not have been just as easily maintained with appellant, as with national banks. We conclude that the above amounts represent substantial competition with national banks. Therefore appellant was correctly classified as a financial corporation under section 23183.

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 26077 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claims of Sterling Finance Corporation of California for refund of franchise tax in the amounts of $209.33, $386.51, $386.51, and $415.32 for the income years ended June 30, 1963, 1964, 1964, and 1965, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 25th day of March, 1968, by the State Board of Equalization,

_____, Chairman

_____, Member

_____, Member

_____ Member

_____, Member

ATTEST: _____, Secretary