BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
BANK OF CALIFORNIA NATIONAL.)
ASSOCIATION)

For Appellant: Eugene F. **McKelligan**
Vice President

For Respondent:' Jon Jensen
Counsel

O P I N I O N

This appeal was originally made pursuant to section 25666 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Bank of California National Association against a proposed assessment of additional franchise tax in the amount of **$36,226.76** for the income year 1971. Subsequent to the filing of this appeal, appellant paid the proposed assessment in full. Accordingly, pursuant to section 26078 of the Revenue and Taxation Code, this appeal is treated as an appeal from the denial of a claim for refund. The parties have stipulated that the amount of tax in issue is **$4,548.00.**

Appellant filed its tax return for the 1971 income year on September 14, 1972; ten months later it filed an amended return. On both returns appellant stated that the tax on preference income did not apply to national banks and that, accordingly, no preference tax was due. After an audit of appellant's amended return, respondent determined that appellant had an additional tax liability of $75,304; a proposed deficiency assessment in this amount, including a proposed assessment of preference tax, was subsequently issued. As a result of appellant's protest, respondent reviewed its action and reduced the proposed assessment to $36,222.76, of which $35,470.13 was an assessment of preference tax.

For purposes of this appeal, the applicability to appellant of the tax on preference income is not in issue, nor is the amount of the proposed assessment in excess of the preference tax. The sole issue presented is whether respondent erred in applying the guidelines provided by Proposed Treasury Regulation 1.57-1(g)(4) (adopted permanently on September 11, 1978, and hereinafter referred to as "Regulation 1.57-1(g)(4)") in calculating appellant's preference income relating to bad debt reserves in such a manner as to result in an excess assessment in the amount of $4,548.00.

With respect to bad debt reserves, banks and financial corporations are subject to preference tax on the amount by which the deduction allowable for the income year for a reasonable addition to a reserve for bad debts exceeds the amount that would have been allowed if the bank or financial corporation maintained its bad debt reserve for all income years on the basis of actual experience, as defined in Section 5135(b)(3)(A) of the Internal Revenue Code of 1954. (Rev. & Tax. Code, §23401, subdivision (b); First City Bank v. Franchise Tax Board, 70 Cal.App.3d 444 [139 Cal.Rptr. 12] (1977).) Section 585(b) of the Internal Revenue Code provides, in pertinent part:

> (3) EXPERIENCE METHOD.--The amount determined under this paragraph for a taxable year shall be the amount necessary to increase the balance of the reserve for losses on loans (at the close of the taxable year) to the greater of--
>
> (A) the amount which bears the same ratio to loans outstanding at the close of the taxable

> year as (i) the total debts sustained during the taxable year and the 5 preceding taxable years ..., adjusted for recoveries of bad debts during such period, bears to (ii) the sum of the loans outstanding at the close of such 6 or fewer taxable years, ...

In reliance upon California Administrative Code, title 18, regulation 26422 1/, respondent argues that,. in the absence of its own regulations, Regulation 1.57-1(g) (4) provides the proper guidelines pursuant to which appellant's preference tax is to be calculated. Regulation 1.57-1(g)(4) provides that a five-year moving **average** is to be used, for the first taxable year ending in 1970, in determining the amount which would **have been allowable as a deduction had the** taxpayer maintained its reserve for bad debts on the basis of actual experience.

Revenue and Taxation Code section 23401, subdivision (b) requires, by reference to section 585 (b)(3)(A) of the Internal Revenue Code of 1954, that a six-year moving average be used to determine a taxpayer's 'bad debt reserve on the basis of actual experience. Despite the express language and intent of section 23401, subdivision (b), respondent maintains that use of a five-year moving average, as called for under these circumstances by Regulation 1.57-1(g)(4), is correct. We cannot agree.

1/ In pertinent part, regulation 26422 provides:

> In the absence of regulations of the Franchise Tax Board and unless otherwise specifically provided, in cases where the Bank and Corporation Tax Law conforms to the Internal Revenue Code, regulations under the Internal Revenue Code shall, insofar as possible, govern the interpretation of conforming state statutes, ...

Respondent's regulation does not provide for **the** use of proposed regulations under the Internal Revenue Code for purposes of interpreting conforming state statutes in the absence of regulations of the Franchise Tax Board.

Respondent notes that, as an administrative agency, it is necessarily called upon to interpret the statutes under which it functions. Since California tax law is patterned after federal tax law in many respects, it has often been recognized that interpretations of federal tax statutes are entitled to great weight in interpreting analogous California statutory provisions. (Holmes v. McColgan, 17 Cal.2d 426 [110 P.2d 428] (1941).) Consequently, respondent contends, in the absence of a showing that its reliance upon Regulation 1.57-1(g)(4) is clearly erroneous, its reliance thereon should be upheld.

While there exists considerable authority supporting the proposition that administrative agencies may interpret the statutes they enforce (United States v. Grimaud, 220 U.S. 506 [55 L.Ed 563] (1911); United States v. Morehead, 243 U.S. 607 [61 L.Ed. 926] (1917)), such interpretations will not be sustained unless they are reasonable and plainly consistent with the statutes they purport to interpret. (Commissioner v. South Texas Lumber Co., 333 U.S. 496 [92 L.Ed. 831] (1933); Rivera v. City of Fresno, 6 Cal.3d 132 [490 P.2d 793] (1971).)

Where the meaning of a statute is plain, its language clear and unambiguous, and there is no uncertainty or doubt of the legislative intent, there is no need for interpretation. (See General Pipe Line Co. of California v. State Board of Equalization, 5 Cal.2d 253 (54 P.2d 18] (1936); Riley v. Robbins, 1 Cal.2d 285 [34 P.2d 715] (1934).) Respondent's use of Regulation 1.57-1(g)(4), which calls for a five-year moving average, to determine appellant's bad debt reserve on the basis of actual experience is obviously inconsistent with the plain language of Revenue and Taxation Code section 23401, subdivision (b), which, through reference to section 585(b)(3)(A) of the Internal Revenue Code, requires the use of a six-year moving average. Accordingly, we must conclude that respondent erred in employing Regulation 1.57-1(g)(4) for purposes of calculating appellant's preference income relating to bad debt reserves.

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, to the extent of $4,548.00, the claim of Bank of California National Association, for refund of franchise tax in the amount of $36,226.76 for the income year 1971, be and the same is hereby reversed.

Done at Sacramento, California, this 19th day of May, 1981, by the State Board of Equalization, with all Board members present.

Ernest J. Dronenburg, Jr., Chairman

George R. Reilly, Member

William M. Bennett, Member

Richard Nevins, Member

Kenneth Cory, Member