BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
RALPH C. SUTRO CO.)

For Appellant: William Berger
Attorney at Law

For Respondent: Crawford H. Thomas
Chief Counsel

James P. Corn
Counsel

O P I N I O N

This appeal is made pursuant to section 25667 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of Ralph C. Sutro Co., against proposed assessments of additional franchise tax in the amounts of $1,377.69, $48.18, $4,278.90, $6,484.03, $123.42, **$287.92**, $6,287.46, **$906.25**, $5,859.80, $693.87, and $490.72 for the taxable years ended September 30, 1957, **1958**, **1958**, **J-959**, 1959, **1960**, 1960, 1961, 1962, 1965, and 1965, respectively, and from the action of the Franchise Tax Board in denying appellant's claims for refund of franchise tax in the amounts of $83.86, **$187.52**, $520.24, $653.25, and $897.42 for the taxable years ended September 30, 1958, 1959, 1960, 1961, and 1965, respectively.

The only question presented is whether appellant should be classified as a financial corporation for franchise tax purposes. Appellant concedes the correctness of

respondent's adjustments except those which relate to taxation at the higher rate applicable to financial corporations.

Appellant is a California corporation with its principal office in Los Angeles. During the years under consideration appellant was engaged in the business of initiating loans secured by first trust deeds on real property, with the intention of assigning them to institutional investors. The loans made by appellant were primarily on single family homes and were of the same nature as real estate loans made by banks. Most were insured by the Federal Housing Administration or the Veterans Administration. The loans were solicited from builders, realtors, and the public and were usually funded with money borrowed from banks on appellant's own line of credit. Appellant's total investment capital approximated $275,000. Its working capital varied between $175,000 for the earlier years to a maximum of about $645,000 for the last fiscal year involved.

Appellant had continuing contractual relationships with the institutional investors, and usually the loans were not originated until after a particular investor agreed to an ultimate assignment. Such assignments often occurred upon completion of construction of the improvements. They usually occurred four to six weeks after the loan was originated. Sometimes there was no prior commitment but a subsequent assignment would nevertheless take place. The average loan volume for these years exceeded $50,000,000.

As the original lender, appellant received the fees for initiating the loans as well as all payments accruing during the period it held the loans. Pursuant to the contractual arrangements made with all investors, after assignment appellant collected the principal and interest due and protected the interest of the investors by seeing that all taxes, insurance and maintenance charges were paid and the property properly maintained until the loan was paid off. As a fee for post-assignment servicing, appellant was allowed to retain a portion of the interest collected. This amounted to one-half percent in the contracts submitted for review. Appellant was also allowed to retain all late charges. The investors could not terminate appellant's rights except by making a specified payment.

Upon the basis of the above facts, respondent concluded that appellant was properly classified as a financial corporation during all of the years in question. Appellant's protest against that determination gave rise to this appeal,

The "financial corporation" classification (Rev. & Tax. Code, § 23183 et seq.) was created by the state Legislature to comply with the federal statute (12 U.S.C.A. §548) prohibiting the imposition of state taxes which discriminate between national banks and other financial corporations. (Crown Finance Corp. v. McColgan, 23 Cal. 2d 280 [144 P.2d 331]; Marble Mortgage Co. v. Franchise Tax Board, 241 Cal. App. 2d 26 [50 Cal. Rptr. 345].) Although the term "financial corporation" is not defined in the statute, the courts have held that a financial corporation is one which deals in moneyed capital, as opposed to other commodities, and which is in substantial competition with national banks. (The Morris Plan Co. v. Johnson,, 37 Cal. App. 2d 621 [100 P.2d 493].)

Appellant contends (1) that it does not deal in moneyed capital of the type intended by the courts in their definition of a financial corporation; and (2) that it is not in substantial competition with national banks. The facts of this case are virtually identical to those existing in the case of Marble Mortgage Co. v. Franchise Tax Board, supra. Substantially similar arguments were made by the taxpayer therein. After considering the facts of that case, in light of all existing authorities, the court concluded in a unanimous opinion that the activities of Marble Mortgage Company concerned moneyed capital and were in substantial competition with national banks, and that it was therefore subject to tax in California at the higher tax rate applicable to financial corporations.

We are not persuaded that appellant's business activities can be distinguished in any material way from those engaged in by Marble Mortgage Company. For these reasons we must sustain respondent's determination that appellant was a "financial corporation" within the meaning of section 23183 of the Revenue and Taxation Code.

Appeal of Ralph C. Sutro Co.

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 Ralph C. Sutro Co. against proposed assessments of additional franchise tax in the amounts of $1,377.69, $48.18, $4,278.90, $4,484.03, $123.42, $287.92, $6,287.46, $904.25, $5,859.80, $693.87, and $490.72 for the taxable years ended September 30, 1957, 1958, 1958, 1959, 1959, 1960, 1960, 1961, 1962, 1965, and 1965, respectively, and that the action of the Franchise Tax Board in denying appellant's claims for refund of franchise tax in the amounts of $83.86, $187.52, $520.24, $653.25, and $897.42 for the taxable years ended September 30, 1958, 1959, 1960, 1961, and 1965, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 27th day of March, 1973, by the State Board of Equalization.

_____, Chairman

_____, Member

_____, Member

_____, Member

_____, Member

ATTEST: _____, Secretary