



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
SOUTHERN SECURITIES CORPORATION)

For Appellant: James J. Sullos, Jr.
Certified Public Accountant

For Respondent: Bruce W. Walker
Chief Counsel

David M. Hinman
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 protest of Southern Securities Corporation against proposed assessments of additional franchise tax in the amounts of \$575.00, **\$1,001.00** and \$794.00 for the income years ended June 30, 1972, June 30, 1973, and June 30, 1974, respectively.

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The question presented is whether appellant is taxable as a financial corporation.

Appellant was incorporated in 1934 for the purpose of handling real estate escrows and acting as trustee on deeds of trust in connection with real estate loans made by a federal savings and loan association in Long Beach. Over the years appellant accumulated some of its earnings for investment purposes, and from time to time it has made real estate loans on its own behalf. It made such loans because the return was substantially greater than could be obtained on other investments. These loans were made primarily to friends and associates of appellant's president, and as of June 30, 1974, appellant held first deeds of trust on 19 parcels. The aggregate value of appellant's loans on those properties was approximately **\$200,006**. **During** each of the appeal years, appellant's interest income from these loans exceeded its income from all other sources.

Appellant filed its tax returns for the appeal years as a general corporation. After auditing the returns, respondent determined that appellant was a financial corporation subject to the higher tax rate specified in Revenue and Taxation Code section 23186. That determination led to the deficiency assessments now in question.

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The classification of financial corporation referred to in section 23183 et seq. of the Revenue and Taxation Code was created to comply with the federal statute (12 U.S.C.A. § 548) prohibiting discrimination against national banks in matters of state taxation. (Crown Finance Corp. v. McColgan, 23 Cal. 2d 280 [144 P.2d 33.1] (1943); Marble Mortgage Co. v. Franchise Tax Board, 241 Cal. App. 2d 26 [50 Cal. Rptr. 345] (1966).) **Although** the statutes do not define the term "financial corporation," the courts have held that it means a corporation which deals in moneyed capital, as opposed to other commodities, and which is in substantial competition with national banks. (Crown Finance Corp. v. McColgan, supra; Marble Mortgage Co. v. Franchise Tax Board, supra.)

There is no doubt **that making** mortgage loans constitutes dealing in moneyed capital. (Marble Mortgage Co. v. Franchise Tax Board, supra; Appeal of First Investment Service Co., Cal. St. Bd. of Equal., July 31, 1973; Appeal of Croddy Corp., Cal. St. Bd. of Equal., Sept. 1, 1966; Appeal of Ponticopoulos, Inc., Cal. St.

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Bd. of Equal., Sept. 1, 1966.) Although appellant contends that it has always dealt primarily in escrow and trustee services, the record shows that the interest appellant earned on its real estate loans was the principal source of its income during the appeal years. Even though appellant engaged in several other income-producing activities, its mortgage loan activities require a finding that it was dealing in moneyed capital. (Appeal of Croddy Corp. p r a ; Appeal of Ponticopoulos, Inc., supra.)

We must also conclude that appellant was in substantial competition with national banks. Appellant's acquisition of trust deeds reduces the investment opportunities available to national banks and places appellant in direct competition with them. (Appeal of First Investment Service Co., supra.) This conclusion is not affected by the fact that appellant's loan funds were derived exclusively from retained earnings rather than from borrowed capital (Appeal of Continental Securities Co., Cal. St. Bd. of Equal., Feb. 3, 1944), or by the fact that appellant loaned money only to a limited number of customers. A corporation may be in substantial competition with national banks even though it does not compete with them as to all possible borrowers or types of loans. (Appeal of Motion Picture Financial Corp., Cal. St. Bd. of Equal., July 22, 1958; The Morris Plan Co. v. Johnson, 37 Cal. App. 2d 621, 623-4 [10 4931 (1940).])

Since appellant was dealing in moneyed capital in substantial competition with national banks, respondent properly classified it as a financial corporation.

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,

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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 protest of Southern Securities Corporation **against pro-** posed assessments **of** additional franchise tax in the amounts of \$575.00, **\$1,001.00** and \$794.00 **for the** income years ended June 30, 1972, June 30, 1973, and June 30, **1974**, respectively, be and the same **is** hereby **sustained**.

Done at Sacramento, California, this **16th** day of August , 1977, by the State Board of **Equalization**.

William B. Smith, Chairman
Richard L. Lee, Member
W. J. S. S. S., Member
John H. S. S., Member
 , Member