BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
) No. 84A-472-MW
CASHMAN INVESTMENT CORPORATION)

Appearances:

For Appellant: John Tonoyan
President

Stanley Zimmerman
Treasurer

For Respondent: David Lew
Counsel

OPINION

This appeal is made pursuant to section 25666[1/] of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Cashman Investment Corporation against proposed assessments of additional franchise tax in the amounts of $3,012, $1,770, $4,008, and $2,505 for the income years 1978, 1979, 1980, and 1981, respectively.

1/ Unless otherwise specified, all section references are to sections of the Revenue and Taxation Code as in effect for the income years in issue.

The question presented by this appeal is whether the Franchise Tax Board properly classified appellant as a financial corporation rather than a general corporation. Additional issues involving appellant's bad debt reserve and an auto expense deduction have apparently been conceded by appellant.

Appellant is a California corporation located in Los Angeles. It's sole businessis to purchase, at a discount, contracts from home improvement contractors. The contracts are between the contractor and the home-owner and are secured by liens against the real property involved. After appellant purchases a contract, the homeowner makes payments to appellant. The contracts are purchased without recourse to the contractor and the appellant is responsible for prior equities in favor of the homeowner.

For the years in issue, appellant determined its tax liability using the tax rate applicable to general corporations. Respondent determined that appellant was a financial corporation during those years and assessed additional tax based on the rate for financial corporations pursuant to section 23183. The financial corporation offset provided in section 23184 was applied in each year.

The "financial corporation" classification was created to comply with the federal prohibition against discrimination in taxation between national banks and financial corporations. (Appeal of AVCAR Leasing, Inc., Cal. St. Bd. of Equal., Mar. 31, 1982.) The term "financial corporation" is not defined by statute, but the courts have developed a two-part test for determining whether a corporation is to be classified as a financial corporation: (1) it must deal in money or moneyed capital as distinguished from other commodities (The Morris Plan Co. v. Johnson, 37 Cal.App.2d 621, 624 [100 P.2d 493] (1940)), and (2) it must be in substantial competition with national banks. (Crown Finance Corp. v. McColgan, 23 Cal.2d 280,284 [144 P.2d 331] (1943).) Respondent's determination that a corporation is a financial corporation is presumed correct and the burden is on the taxpayer to show that it is not a financial corporation. (Appeal of Atlas Acceptance. Corporation, Cal. St. Bd. of Equal., July 29, 1981.)

Appellant apparently concedes that it meets the first part of the test and disputes only the determination that it is in substantial competition with national

banks. It contends that it is not in competition with national banks because banks do not purchase the particular kind of commercial paper that appellant purchased. In support of its position, appellant refers to the Appeals of Arc Investment Co., decided by this board on February 18, 1964, which found no substantial competition with national banks where the taxpayer purchased unsecured notes made by persons to whom national banks would not loan money. In Atlas Acceptance Corporation, supra, we concluded that Arc Investment Co. erroneously focused on the particular type of commercial paper purchased rather than commercial paper generally. Relying on decisions of the United States Supreme Court in First Nat. Bank v. Hartford, 273 U.S. 548 [71 L.Ed. 767] (1927) and Minnesota v. First Nat. Bank, 273 U.S. 561 [71 L.Ed. 7741 (1927), we held in Atlas Acceptance Corporation that competition with national banks exists where a corporation is engaged in the business of discounting commercial paper, since this is an activity engaged in by national banks.

Appellant is in the business of discounting commercial paper. This is an activity engaged in by national banks. Respondent determined that appellant's commercial paper activity was substantial and appellant has not disputed this. Therefore, we must conclude that appellant was in substantial competition with national banks and it was properly classified as a financial corporation.

Appellant contends that it is inequitable to retroactively apply the holding of Atlas Acceptance Corporation to it, since there was no reasonable basis for it to have concluded that it was a "financial corporation" and to retroactively use the higher financial corporation tax rate defeats its reasonable expectations. We do not agree that this is inequitable since appellant has not shown any detrimental reliance on the holding in Arc Investment Co. The cases on which we relied in correcting our erroneous decision in that appeal date from 1927, negating appellant's argument that it had no reasonable basis for concluding that it was a financial corporation.

For the reasons stated above; we must sustain respondent's action.

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 protest of Cashman Investment Corporation against proposed assessments of additional franchise tax in the amounts of $3,012, $1,770, $4,008, and $2,505 for the income years 1978, 1979, 1980, and 1981, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 29th day of July, 1986, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Bennett, Mr. Dronenburg and Mr. Harvey present.

Richard Nevins, Chairman

William M. Bennett, Member

Ernest J. Dronenburg, Jr., Member

Walter Harvey*, Member

_____, Member

*For Kenneth Cory, per Gdvernment Code section 7.9