BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
BARNSDALL OIL COMPANY OF CALIFORNIA)

Appearances:

For Appellant: Messrs. Thomas J. Casey, H. W. Williams and John H. Beman, Attorneys for Appellant

For Respondent: Hon. Chas. J. McColgan, Franchise Tax Commissioner

O P I N I O N

This is an appeal pursuant to Section 25 of the Bank and Corporation Franchise Tax Act (Statutes of 1929, Chapter 13, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of Barnsdall Oil Company of California, a corporation, to a proposed assessment of an additional tax in the amount of $49,031.26 for the year 1931, based on its return for the year ended December 31, 1930.

The issues involved in this appeal relate to the amount of offset to be allowed against the tax provided for in the Act on account of taxes paid locally upon leasehold interests in oil lands.

Under Sections 4 and 26 of the Act, the full amount of taxes paid locally upon personal property and 10% of taxes paid locally upon real property may be offset against the franchise tax provided for in the Act, subject to the limitation that the total offset shall not exceed 75% of the franchise tax. In computing appellant's total offset against its franchise tax, the Commissioner considered only 10% of the taxes paid locally upon its leasehold interests in oil lands. The appellant contends that the full amount of such taxes should have been considered for the reason that leasehold interests in oil lands are not included in the term "real property" and are included within the term "personal property" as those terms are used in sections 4 and 26 of the Act.

An issue similar to the issue involved in the instant appeal was presented for our determination in the appeal of Catalina View Oil Company (decided by this Board on April 20, 1932). Inasmuch as it appeared to us that leases of oil land are embraced within the term "real estate" and excluded from the term "personal property," as those terms are defined in Section 3617 of the Political Code, which defines terms as used in Title IX of the Political Code relating to the assessment

and collection of taxes on property, we held that not 100%, but at the most only 10% of the taxes paid locally on such leases could be considered for offset purposes under the Bank and Corporation Franchise Tax Act.

The appellant apparently does not, and, in view of the decisions of the Supreme Court of this state cited in the above mentioned appeal, could not properly,question that leasehold interests in oil lands are included within the term "real estate" as defined in Section 3617 of the Political Code and hence are excluded from the term "personal property" as therein defined, since the latter term is there defined as including only property not included within the meaning of the term "real estate" or "improvements." But the appellant vigorously contends that the definitions contained in Section 3617 of the Political Code should not be considered as controlling the construction of the terms "real property" and "personal property as used in the Bank and Corporation Franchise Tax Act.

In support of this contention, appellant argues that the classification of property into real estate, improvements, and personal property made by Section 3617 of the Political Code, is not the ordinary classification of property, since ordinarily property is considered as falling into either one or the other of two classes, viz., real property or personal property. It is claimed that leasehold interests are not with-. in the meaning given to that term by various sections of the Codes, particularly Section 658 of the Civil Code which defines "real property" as consisting of:

> "1. Land,
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> 2. That which is affixed to land;
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> 3. That which isincidental or appurtenant to land;
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> 4. That which is immovable by law; except that for the purposes of sale, emblements, industrial growing crops and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale, shall be treated as goods and be governed by the provisions of the title of this code regulating the sales of goods."

Inthis connection, appellant insists it is significant that the Act employs the terms "real property" and "personal property," thus following the ordinary classification Of property, and not the classification made by Section 3617 of the Political Code. Furthermore, appellant points out that Section 3617 of the Political Code purports only to define terms as used in Title IX of the Political Code and hence cannot be considered controlling in construing the Bank and Corporation Franchise Tax Act since that Act is not a part of Title IX or of any other title of the Political Code and does not either

expressly or impliedly, by reference or otherwise, incorporate the definitions contained in Section 3617 of the Political Code.

Finally, appellant contends that the provisions of the Act should be so construed as not to render them unconstitutional, and hence should be so construed as to permit appellant to offset against its franchise tax the full amount of the taxes paid locally upon its leasehold interests in oil lands, subject only to the limitation that the total offset should not exceed 75% of said franchise tax for otherwise appellant would be unconstitutionally discriminated against and deprived of the equal protection of the laws.

We appreciate fully the importance of the issue involved in the instant appeal and are deeply impressed by appellant's able arguments. But upon careful reconsideration of the entire matter, we are inclined to the opinion that our decision in the appeal of Catalina View Oil Company, referred to above, was correct and should not be disturbed,

The full amount of taxes paid locally upon any kind of property can be considered for offset purposes under the Act only if they can be regarded as being taxes paid locally upon "personal property" as that term is used in the Act. As noted above, by virtue of the definition of the terms "real estate" and "personal property" set forth in Section 3617 of the Political Code, leasehold interests in oil lands are not included within the meaning of the term "personal property" as that term is used in Title IX of the Political Code relating to the assessment and collection of taxes on property.

Consequently, it appears that the construction of the Bank and Corporation Franchise Tax Act contended for by appellant is necessarily predicated upon the proposition that the term "personal property" has one meaning when used in the laws relating to the assessment and collection of local taxes, and another meaning when used in the sections of the Act granting an offset for such local taxes, with the result that although taxes on leasehold interests in oil lands are not taxes on personal property within the contemplation of the laws under which the taxes are imposed, nevertheless, for offset purposes under the Act, the taxes are transformed into taxes *on* personal property.

It seems rather remarkable that the Legislature should intend that such dissimilar meanings should be ascribed to the same term when used in such a related manner. Nevertheless, it is possible that the Legislature did so intend, and expressed such intention by the use of the classification of "real property" and "personal property" in the Act, rather than the classification of "real estate" and "personal property" sanctioned by Section 3617 of the Political Code. Certainly the use of the term "real property" rather than the term "real estate" cannot lightly be disregarded.

Unquestionably, it is possible that the explanation of the use of the term "real property" is the one advanced by the appellant, namely, that the term "real property" should not be construed as being co-extensive with the term "real estate" and that the kinds of property included within the latter, but excluded from the former, term should be considered as personal property, with the result that the-full amount, rather than 10% of the amount, of the taxes paid locally upon such property should be considered for offset purposes under the Act.

In this connection we think it should be remembered that Section 16 of Articles XIII of the Constitution, pursuant to which the Bank and Corporation Franchise Tax Act was passed, expressly provides that the tax therein provided for on corporations "according to or measured by their net income" should be subject to offset "in the amount of personal property taxes paid by such corporations to the state or political subdivisions thereof." An offset for real property taxes is not provided for in Section 16, but was added by the Legislature in enacting the Bank and Corporation Franchise Tax Act. Regardless of what kinds of property were intended to be included within the term "real property" we do not believe that the Legislature, by providing for an offset of real property taxes,, intended to extend or enlarge the scope of the term "personal property" so as to include therein certain kinds of property not included within the term "personal property" as used in Section 16 of Article XIII.

Such an extension or enlargement would be of questionable constitutionality. Although Section 16 authorizes the Legislature to change the "amount or nature" or the offset provided for therein, it is arguable that providing for an offset of taxes on property not included within the term "personal property" would not be changing the amount or nature of the offset provided, but would be granting an entirely new offset. (See Roger J. Traynor, National Bank Taxation in California, (1929) 17 Cal. Law. Rev. PP 502-504.) Consequently in view of the rule of statutory construction urged upon us by appellant to the effect that statutes should if possible not be construed so as to render them of doubtful or questionable constitutionality, we will assume that the term "personal property" was used in the same sense both in Section 16 of Article XIII of the constitution and in the Act which was passed pursuant thereto.

At the time Section 16 of Article XIII was adopted, Section 3617 of the Political Code was in full force and effect. This section of the Political Code defines terms as used in statutes passed to carry into effect all the provisions of Article XIII of the Constitution other than Section 16. Hence, as stated at page seven of the opinion filed in the appeal of Catalina View Oil Company:

> "It seems to us reasonable to assume that it was intended that the term 'personal property' as used in Section 16 of Article XIII of the Constitution should have the same meaning as was given to the term in the laws passed to carry into effect other provisions of Article XIII. If the contrary had been intended, it would seem that such an intention would have been expressed."

If the term "personal property" was used in the same sense both in Section 16 of Article XIII of the Constitution and in the Bank and Corporation Franchise Tax Act, and if it was intended to mean the same in Section 16 of Article XIII as it is defined to mean in Section 3617 of the Political Code, it follows that the term as used in the Act must have the same meaning as given to it by Section 3617 of the Political Code. Consequently, it would seem that appellant's explanation of the use of the term "real property?' in the Act, rather than the term "real estate" cannot be accepted since that explanation would result in construing the term "personal property" as including certain kinds of property not included within the term as defined in Section 3617 of the Political Code.

Another explanation of the use of the term "real property" rather than the term "real estate" which occurs to us is that, although the Legislature desired to provide for the allowance of an offset on account of taxes paid locally upon certain kinds of property in addition to an offset on account of taxes paid locally upon personal property, it did not desire to grant an offset on account of taxes paid locally upon all kinds of property included within the term "real estate" as defined in Section 3617 of the Political Code, and, believing the term "real property" to have a more restricted meaning than the term "real estate," acted to accomplish this limited additional offset by employing the former term rather than the latter.

A more liberal explanation of the use of the term "real property" is that the Legislature believed the term to be synonymous with the term "real estate" and hence considered it a matter of indifference which of the terms should be used.

That this explanation is the correct one appears likely in view of the fact that in several sections of the constitution relating to taxation, and in the sections of the Political Code passed to carry these sections into effect, the term "real property" is used rather than the term "real estate," although no apparent reason exists for giving to the term a construction different from the construction which would be accorded the term "real estate."

Thus, in Section 18 of Article XIII it is provided that the tax on the underwriting profit of ocean marine insurers shall be in lieu of all other taxes on such insurers except taxes upon "real property," whereas in subdivision (b) of

Section 14 of Article XIII (pursuant to which ocean marine insurers were taxed prior to the adoption of Section 18 of Article XIII), it is provided that the tax on gross Premiums of insurance companies shall be in lieu of all other taxes on such companies except taxes on "real estate-" Again, Section 16 of Article XIII provides that the tax on banks "according to or measured by" their net income shall be in lieu of all other taxes on such banks or the shares thereof except taxes upon their "real property," whereas under the former system of taxation of banks, the tax on bank shares imposed under the provisions of subdivision (c) of Section 14 of Article XIII was in lieu of all other taxes upon such shares, and upon the property of such banks, except taxes upon "real estate," In changing the respective methods of taxation of ocean marine insurers and banks, we know of no reason why it should have been intended that the taxes under the new method should be in lieu of any different taxes than were the taxes under the former methods. Hence, we think there is ample justification for construing the term "real property" as used in the Act as being synonymous with the term "real estate."

We cannot agree with appellant that the construction which we have placed upon the provisions of the Act herein considered results in rendering those provisions unconstitutional. If the state can constitutionally classify taxes paid locally upon property in such a manner so that the full amount of taxes paid upon certain kinds of property, but only 10% of the amount of taxes paid upon certain other kinds of property can be considered in determining the total amount of franchise taxes to be exacted from particular corporations, the construction which we have given to the Act does not render it unconstitutional inasmuch as there is no reason to believe that leasehold interests in oil lands are so peculiar as to necessitate extending to the corporations paying local taxes thereon different and more favorable consideration than can be and is extended to corporations which are entitled to offset only 10% of their local taxes against their franchise tax.

It may be that the state cannot constitutionally so classify local property taxes. However, this question will not here be considered by us, inasmuch as we believe that, generally, we should not pass upon the constitutionality of legislation but should leave such matters for the courts to determine.

Only one other matter remains for consideration in the instant appeal. It appears that representatives of appellant have at various times requested the Commissioner to furnish them with certain detailed information contained in the returns filed with him by other corporations. These requests have been denied, by the Commissioner. At a rehearing held before this Board in the instant appeal, appellant askedthat we decide that the Commissioner should furnish the requested information. We must decline to do so for lack of jurisdiction to order the Commissioner to furnish such information.

ORDER

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, that the action of the Franchise Tax Commissioner in overruling the protest of Barnsdall Oil Company of California, a corporation, against a proposed assessment of an additional tax of $49,031.26, with interest, based upon return of said corporation for the year ended December 31, 1930, under Chapter 13, Statutes of 1929, be and the same is hereby sustained.-

Done at Sacramento, California, this 11th day of February 1933, by the State Board of Equalization.

R. E. Collins, Chairman
Jno C. Corbett, Member
H. G. Cattell, Member
Fred E. Stewart, Member

Attest: Dixwell L. Pierce, Secretary