



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of ~~the~~ Appeal of)
STATE MUTUAL BUILDING AND LOAN)
ASSOCIATION)

Appearances:

For Appellant: Mr. Walter J. Mitchell, Attorney

For Respondent: 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 State Mutual Building and Loan Association, a corporation, against a proposed assessment of an additional tax in the amount of \$184.46, based upon the return of the above corporation for the taxable year ended December 31, 1931.

The sole question involved in this appeal is whether the Commissioner erred in disallowing as a deduction the sum of \$18,267.97, representing federal income taxes alleged to have accrued during the year 1931,

Section 8c of the Act, as amended in 1931, provides, with certain limitations not relevant to the instant appeal, that the deduction for federal income taxes should be the amount of such taxes "accrued" during the taxable year. It appears that Appellant would have been required to pay \$18,267.97 in federal income taxes on its net income earned during the year 1931 were it not for the fact that subsequent to 1931, Appellant obtained from the Commissioner of Internal Revenue a ruling to the effect that Appellant was a mutual association exempt from federal income tax in the above amount. Notwithstanding the ruling of the Commissioner of Internal Revenue, Appellant contends that it became liable for the tax and that the same accrued during the year 1931, although it has not paid it, and, under the above ruling, will not be required to pay it.

We can see no merit in Appellant's contention. We do not think it can sensibly be said that Appellant became liable for the tax and that the ruling of the Commissioner of Internal Revenue relieved it from liability therefor. Rather, we think that the ruling of the Commissioner should be regarded as holding that the Appellant was not liable for the tax.

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Furthermore, although a tax may accrue before it is assessed and due (United States v. Anderson, 269 U.S. 422), in our opinion, a tax cannot be considered as having accrued if it never is assessed or never becomes due.

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, that the action of Chas. J. McColgan, Franchise Tax Commissioner, in overruling the protests of State Mutual Building and Loan Association, against proposed assessment of an additional tax based upon the return of said corporation for the year ended December 31, 1931, be and the same is hereby sustained.

Done at Sacramento, California, this 26th day of May, 1933, by the State Board of Equalization.

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

ATTEST: Dixwell L. Pierce, Secretary