BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
RAPHAEL WEILL & COMPANY)

Appearances:,

For Appellant: Percy E. Towne, Attorney at Law

For Respondent: Chas. J. McColgan, Franchise Tax Commissione

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 Raphael Weill & Company, a corporation, to a proposed assessment of an additional tax in the amount of $198.39, based upon the return of the above corporation for the taxable year ended January 31, 1932.

During the taxable year ended January 31, 1932 Appellant made contributions and donations totalling $19,213.90 to various charitable organizations in and about San Francisco where Appellant is engaged in the retail business. In its franchise tax return for this year the above amount was deducted in arriving at net income. Of this amount, the Commissioner allowed as a deduction but $1,500 representing payments to The Californians,*" Inc. The balance of this amount, i.e., $17,713.90, was disallowed as a deduction and the additional assessment in question accordingly proposed.

The Act does not specifically authorize the deduction of contributions or donations. But Section 8a of the Act provides that from gross income there shall be deducted "all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on business". Appellant contends that the contributions and donations in question constituted an ordinary and necessary expense of engaging in the retail business in San Francisco; that many of the contributions were solicited by customers of Appellant and if the contributions were not made Appellant would have lost the customers' trade; that by making the contributions Appellant had obtained a reputation for being generous and liberal, a reputation which is a potent factor in securing business; and that the expenditure of a similar amount of money in direct advertising would probably have failed to produce an equal amount of business.

It is to be noted that the situation with respect to the deduction by corporations of contributions and donations is the same under the Federal Revenue Act as under the State Act, i.e.,

they can be deducted only if they can be considered an ordinary and necessary expense of carrying on business. Hence, it would seem that decisions under the Federal Act as to the deductibility of contributions and donations are particularly pertinent in interpreting the State Act.

Although the decisions under the Federal Act are somewhat inconsistent, the general rule seems to be that contributions and donations are deductible thereunder by corporations only if given for a purpose from which the donor or its employees will receive some special benefit or advantage not obtained by the general public and are not deductible if the donor's benefit from the expenditure of the donations by the donees is merely a part of the public benefit (See Klein, Federal Income Taxation, Par. 23:18, 18a, and 18b). Inasmuch as it does not appear that Appellant or its employees received any special benefit or advantage from the purposes for which the contributions and donations in question were made, it would seem that the contributions and donations would not be deductible under the Federal Act.

Although the rule with respect to the deduction of contributions and donations by corporations should perhaps be broadened somewhat by appropriate amendments to the Act, we think we are bound by the above interpretation of the phrase "ordinary and necessary expenses * * * * in carrying on business", and consequently must hold that the Commissioner did not err in disallowing the deduction of the contributions and donations in question,

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 the Franchise Tax Commissioner in overruling the protest of Raphael Weill & Company, a corporation, against a proposed assessment of an additional tax in the amount of $198.39, based upon the net income of said corporation for the year ended January 31, 1932, be and the same is hereby sustained.

Done at Sacramento, California, this 3rd day of June, 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