



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
SEE'S CANDY SHOPS, INC.)

Appearances:

For Appellant: Lawrence See, its Secretary-Treasurer;
Harry W. Moore, Certified Public Accountant
For Respondent: W. M. Walsh, Assistant Franchise Tax Commis-
sioner; Frank M. Keesling, Franchise Tax
Counsel; Clyde Bondeson, Senior Franchise
Tax Auditor.

O P I N I O N

This appeal is made pursuant to Section 25 of the Bank and Corporation Franchise Tax Act (Chapter 13, Statutes of 1929, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of See's Candy Shops, Inc., to his proposed assessment of additional tax in the amount of \$161.03 for the taxable year ended December 31, 1937, based upon the income of the corporation for the year ended December 31, 1936.

During the year 1936 the Appellant became a member of the California Chain Store Association which had been organized for the purpose of presenting to the voters of the state the viewpoint of the chain stores on the Chain Store Tax Act adopted at the 1935 legislative session and which was to be passed upon by the voters by way of referendum at the election of November 1936. The Appellant paid to the Association during the year 1936 the amount of \$4,025.78 and claimed that amount as a deduction from gross income in its return of income for the year. The Commissioner disallowed the deduction and levied the proposed assessment which is called into question by this appeal.

The Commissioner bases his action upon the grounds that the amount was expended for the purpose of defeating legislation and that amounts expended for that purpose are not deductible as ordinary and necessary business expenses pursuant to Section 8(a) of the Bank and Corporation Franchise Tax Act. The Appellant does not question the principle of law relied upon by the Commissioner, but contends that the amount in question was not expended solely for the purpose of defeating legislation and is deductible, at least in part, as a business expense.

In support of this contention the Appellant offered testimony to the effect that at the time it paid the \$4,025.78 to the Association it knew that it was to obtain in consideration thereof the services of Lord and Thomas, an advertising agency which had been engaged by the Association to act on its behalf and on

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behalf of its members and that the advertising campaign of the Association called for the frequent presentation to the public of the Appellant's name and the furnishing to Appellant of an individual whose work would involve the promotion of Appellant's business. Pursuant to this plan, the Association furnished to Appellant a Miss Kay whose salary and ~~expenses were~~ paid by the Association. In the course of Miss Kay's work, she spoke on many occasions about See's candies, conducted demonstrations and gave away samples of candies, but did not mention the proposed chain store tax. As evidence of the value of the advertising service which it received through Lord and Thomas, the Appellant points to an increase in its sales of thirty-one per cent and as rather convincing evidence of its opinion of the value of the services performed by Miss Kay it points to the fact that upon the completion of her services for Lord and Thomas she was employed by the Appellant for a period of one year at a salary of \$350 a month to perform services identical with those heretofore performed by her,

The conclusion is inescapable that the Appellant was motivated, in part at least, to make the payment in question to the Association to enable it to conduct a campaign against the approval by the voters of the Chain Store Tax Act and that to that extent the expenditure was made for the purpose of defeating proposed legislation. It also appears from the evidence, however, that the Appellant had reason to believe that it would receive a good deal of advertising value as the result of the expenditure and that it did in fact receive such value. While it is difficult to allocate any particular portion of the expenditure to the one purpose or the other, we are of the opinion that the two purposes may reasonably be regarded as having been of about equal weight in inducing the expenditure and we believe, accordingly, that the Appellant is entitled to include \$2,000 of the amount in question in the deduction available to it under Section 8(a) of the Bank and Corporation Franchise Tax Act for ordinary and necessary business expenses. The action of the Commissioner on the Appellant's protest to the Commissioner's proposed assessment of additional tax should therefore be modified to the end that the Appellant be allowed the deduction from its gross income of \$2,000 of the amount paid by it to the California Chain Store Association.

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 protest of See's Candy Shops, Inc., to his proposed assessment of additional tax in the amount of \$161.03 for the taxable year ended December 31, 1937, based upon the income of the corporation for the year ended December 31, 1936, be and the same is hereby modified. Said action is reversed insofar as the commissioner disallowed the deduction as a business expense pursuant to

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Section 8(a) of the Bank and Corporation Franchise Tax Act of the amount of \$2,000 of the total amount of \$4,025.78 paid by the corporation to the California Chain Store Tax Association. In all other respects said action is sustained. The correct amount of the tax to be assessed to See's Candy Shops, Inc., is hereby determined as the amount produced by means of a computation which will include the allowance as a deduction of said amount of \$2,000 in the calculation thereof. The Commissioner is hereby directed to proceed in conformity with this order and to send to See's Candy Shops! Inc., a notice of assessment revised in accordance therewith,

Done at Sacramento, California, this 26th day of September, 1939, by the State Board of Equalization.

R. E. Collins, Chairman
Fred E. Stewart, Member
Wm. G. Bonelli, Member
George R. Reilly, Member

ATTEST: Dixwell L. Pierce, Secretary