



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
FENN-SHELTON COMPANY }

Appearances:

For Appellant: J. E. Fenn, its President; H. A. Harrison,
Certified Public Accountant.
For Respondent: W. M. Walsh, Assistant Franchise Tax Commis-
sioner; James J. Arditto, Franchise Tax
Counsel; Hebard Smith, Assistant Tax Counsel.

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 Fenn-Shelton Company to his proposed assessment of an additional tax in the amount of \$189.94 for the taxable year ended December 31, 1938, based upon the income of the company for the year ended December 31, 1937.

Section 8(a) of the Bank and Corporation Franchise Tax Act allows a deduction from gross income "... a reasonable allowance for salaries or other compensation for personal services actually rendered . . ." The Commissioner has reduced the deduction claimed by the Appellant in its return of income for 1937 for salaries paid Mr. Fenn and Mr. Shelton, president and vice-president respectively of Appellant, from \$9000 each to \$6000 each for their services during that year.

The facts before us respecting the character of the Appellant's business are substantially the same as those presented in a former proceeding involving the taxable year ended December 31, 1936, in which we rendered a decision on March 10, 1938, adverse to the Appellant. The service station fixed property investment of the Appellant has increased, however, from \$61,088.28 in 1935 to \$98,792.62 in 1937, and the gross business enjoyed has grown from \$136,576.72 in 1935 to \$179,772.75 in 1937. The prestige gained by Appellant has resulted in the acquisition by it of the service work for the Automobile Club of Southern California for the Beverly Hills district.

From the testimony introduced at the hearing of the present matter, it is apparent that the growth and success of the Appellant is due primarily to the competency and resourcefulness of its officers, Mr. Fenn and Mr. Shelton. In the face of the evidence submitted by the Appellant, we would not, in our opinion,

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be warranted in substituting either our judgment or that of the Commissioner for that of the Appellant's Board of Directors. Standard Silk Dyeing Co., 9 B. T. A. 648; Klug & Smith Co., 8 B. T. A. 966.

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 Fenn-Shelton Company to a proposed assessment of an additional tax in the amount of \$189.94 for the taxable year ended December 31, 1938, based upon the income of said corporation for the year ended December 31, 1937, be and the same is hereby reversed. Said ruling is hereby set aside and the said Commissioner is hereby directed to proceed in conformity with this order.

Done at Sacramento, California, this 2nd day of December, 1942, by the State Board of Equalization.

Ivan C. Sperbeck, Member
Wm. G. Bonelli, Member
George R. Reilly, Member

ATTEST: Dixwell L. Pierce, Secretary