



OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
 SAN DIEGO TRANSIT MIXED CONCRETE COMPANY)

Appearances:

For Appellant: S. H. Moore, its Secretary-Treasurer;
 Carl M. Esenoff, Certified Public
 Accountant

For Respondent :W. M. Walsh, Assistant Franchise Tax
 Commissioner; Hebard P. Smith,
 Associate Tax Counsel

O P I N I O N OK

This appeal is made pursuant to Section 35 of the Sank and Corporation Franchise Tax Act (Chanter 13, Statutes of 1929, as amended) from the action of the Franchise Tax Commissioner on the protests of the San Diego Transit Mixed Concrete Company to proposed assessments of additional franchise tax in the amounts of \$3'79.00 and \$304.98 For the taxable years ended December 31, 1943, and 1944, respectively.

The Appellant is engaged in the business of selling transit mixed concrete and is owned and managed by its officers, J. H. Caudell, President, A. H. Johnson Vice-President, and S. H. Moore, Secretary-Treasurer. Mr. Caudeli, who owns 25% of Appellant's outstanding stock, has had some twenty years experience in the type of business conducted by the corporation and devotes approximately half his time to its activities. Messrs. Johnson and Moore are graduate engineers, the former devoting about half his time to the business and owning 25% of the outstanding stock and the latter devoting his entire-time to the business and holding the remaining 50% of the **outstanding stock**.

In its returns of income for each of the years 1942 and 1943 the Appellant claimed deductions from its gross income for compensation paid to Messrs. Caudell and Johnson in the amount of \$9,537.50 each and to Mr. Moore in the amount of \$21,500. The compensation paid in each case consisted of salary and bonus. The Commissioner disallowed the deduction of the bonuses, totalling \$9,475 for 1942 and \$9,175 for 1943, on the ground that the total compensation paid each of the officers was in excess of the "... reasonable allowance for salaries or other compensation for personal services actually rendered ..." authorized to be deducted by Section 8(a) of the Bank and Corporation Franchise Tax Act. The propriety of his action in so doing is the only question presented herein for our consideration.

There is no dispute between the parties as to the applicable legal principles; the sole issue being the reasonableness of

the compensation paid for the services performed by the officers. The only factual information before us in this connection is that set forth in the memoranda filed by the Appellant and the Commissioner, the Appellant not having availed itself of the opportunity for an oral hearing but having submitted the matter for decision upon the basis of the memoranda on file.

In support of his position that the bonuses were excessive the Commissioner states that they were paid in violation of the Federal Salary Stabilization Act, that when added to the other salaries paid the officers their compensation exceeds that of previous years by approximately 100%, that the amounts allowed by him are liberal and exceed salary payments of previous years by approximately 50%, that only a portion of the time of two of the officers was devoted to the business, that no dividends have ever been paid by Appellant, and that the bonuses are in direct ratio to the stockholdings of the officers, amounting substantially to a distribution of Appellant's entire net income and in reality constituting a distribution of profits in the guise of salaries.

While we have been furnished certain information as to the Appellant's gross and net income and its capital and surplus accounts for the years in question, nothing would be gained by setting forth those figures for the record before us permits no escape from the conclusion that the action of the Commissioner must be sustained. His determination that the compensation is excessive is presumptively correct and the burden of proof rests upon the Appellant to establish the reasonableness of the salary payments. Crescent Bed Company v. Commissioner of Internal Revenue, 133 Fed. 2d 424.

There has been no evidence whatever presented to us respecting the duties actually performed by each of the officers or the prevailing rate of compensation paid by other firms for services comparable to those of the officers. The absence of evidence on these matters, together with the circumstances above mentioned, clearly demonstrates that the Appellant has failed to meet the burden of proof resting upon it.

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, pursuant to Chapter 1.3, Statutes of 1929, as amended, that the action of Chas. J. McColgan, Franchise Tax Commissioner, on the protests of the San Diego Transit Mixed Concrete Company to proposed assessments of additional franchise tax in the amounts of \$379.00 and \$304.98 for the taxable years ended December 31 1943, and 1944, respectively, be and the same is hereby sustain&.

Appeal of San Diego Transit Mixed Concrete Company

Done at Oakland, California, this 7th day of January, 1948,
by the State Board of Equalization.

Wm. G. Bonelli, Chairman
J. H. Quinn, Member
Jerrold L. Seawell, Member
Geo. R. Reilly, Member

ATTEST: Dixwell L. Pierce, Secretary