

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA.

In the Matter of the Appeal of)
THOMAS A. BECKETT INVESTMENT CO.)

Appearances:

For Appellant: Donald McGovern, 'Attorney at Law;
 Lawrence Cashion, Certified
 Public Accountant.

For Respondent: Burl D. Lack, Chief Counsel;
 Milton A. Huot, Associate Tax
 Counsel

O P _ I N _ I O N

This appeal is made pursuant to Section 25667 of the Revenue and Taxation Code (formerly Section 25 of the Bank and Corporation Franchise Tax Act) from the action of the Franchise Tax Commissioner (now succeeded by the Franchise Tax Board) on the protest of Thomas A. Beckctt Investment Co. to proposed assessments of additional tax in the amounts of \$34.22, \$304.12 and \$749.36 for the income years 1941, 1942 and 1943, respectively.

In 1940 Thomas A. Beckett gave certain assets to his two sons and a daughter, those assets and others owned by him thereupon being transferred to the Appellant in exchange for the issuance to him and to each of the children of five shares of Appellant's capital stock. Mr. Beckett thereafter transferred additional assets to Appellant in that year, Appellant executing notes in his favor in the total amount of \$90,993.24 in exchange for those assets and that amount being entered in Appellant's records as a credit to Notes Payable. The sums of \$7,850 and \$20,000 were transferred in the years 1942 and 1943, respectively, pursuant to Mr. Beckett's direction, from the Notes Payable account to a Donated Surplus account. No question has been raised as to the solvency of Appellant during the period in question.

The Appellant owned income producing real properties in California and Illinois. The Commissioner disallowed a portion of the deduction taken by Appellant for officers' salaries for 1941, 1942 and 1943 and allocated the remaining portion between California and Illinois, operations on the basis of the gross income derived in each of those States from properties located therein. Other expenses were allocated to the State wherein was located the property to which each particular expense related.

Appellant objects to the action of the Commissioner in regarding as income to it, under Section 6(d) of the Bank and Corporation Franchise Tax Act as amended in 1939, the amounts transferred at Mr. Beckett's direction from Notes Payable to Donated Surplus.- It contends that such amounts are properly to be regarded as a contribution by him of capital to the corporation rather than a partial cancellation of its indebtedness to him. It is stated in this connection that the corporation's notes were issued to him pending his decision as to the amount of additional assets he would donate to the corporation and that the transfers and partial cancellations of the indebtedness were merely in furtherance of his original plan and a means whereby the sums of \$7,850 and \$20,000 were contributed by him to Appellant.

The controversy before us herein as respects the application of Section 6(d) of the Act is identical with that involved in the Appeal of Granite Construction Company, Inc., this day decided. Upon the basis of our opinion in that Appeal the action of the Commissioner under Section 6(d) must be sustained herein.

The Appellant has not objected to the action of the Commissioner in disallowing in part its deduction from gross income for officers' salaries but has confined its attack to his allocation between California and Illinois of salary and other expenses which were allowed as deductions. A presumption of correctness attaches to this action of the Commissioner under Section 10 of the Act and it is incumbent upon the Appellant to establish wherein that action results in the taxation of income derived from sources outside this State. Butler Bros. v. McCollgan, 315 U. S. 501. As the appellant

