



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
PRODUCERS COMPANY, LTD.)

Appearances:

For Appellant: John Lawler and John J. Concannon
General Manager and Auditor,
respectively, of Appellant

For Respondent: Burl D. Lack, Chief Counsel;
John S. Warren, Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to Section 25667 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of Producers Company, Ltd. to proposed assessments of additional franchise tax in the amounts of \$5,102.64 and \$2,238.66 for the taxable years 1942 and 1943, respectively.

Under Section 4(3) of the Bank and Corporation Franchise Tax Act (now Section 23151 of the Revenue and Taxation Code) every corporation doing business within the State and not expressly exempted from taxation must pay an annual franchise tax measured by its net income for the next preceding income year, Acting in pursuance to Section 4(3) Appellant filed a franchise tax return for each of the taxable years 1942 and 1943 and paid a tax computed on the basis of its net income for the income years 1941 and 1942, respectively.

Upon auditing the returns filed by Appellant, the Franchise Tax Board made certain adjustments increasing the reported net income for the income years 1941 and 1942 and issued notices of the proposed assessments in question. Appellant has not objected to the adjustments to its net income and apparently concedes the correctness of the Franchise Tax Board's computation of the additional tax. It takes the position, however, that it was not doing business during the taxable year 1943 and for that reason does not owe any tax based on its net income for the income year 1942. On this basis it asserts that the proposed deficiency assessment for the taxable year 1943 is erroneous and that its self-assessed tax of \$3,700.44 for that year should be credited (after deduction of the minimum tax of \$25 imposed on a corpo-

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ration not otherwise subject to tax) against the deficiency for the taxable year 1942 (income year 1941). Thus, the primary question for decision herein is whether Appellant was "doing business*" within the meaning of the statute during the taxable year 1943.

Appellant, a California corporation, is a wholly owned subsidiary of Poultry Producers of Central California, a tax-exempt cooperative marketing association. It was incorporated in 1920 to engage in activities for the benefit of the cooperative and its members which were not considered expedient for the cooperative to conduct. During the income years 1941 and 1942, its activities included the marketing of eggs and poultry for producers who were not members of the association, the sale of feed and poultry supplies to such nonmembers, publication of a trade magazine, "Nulaid News", and the operation of "Producers Company, Ltd., Investment Fund" for dealing in the cooperatives' revolving fund certificates. As expressed in its articles of incorporation, Appellant "aims to serve as an auxiliary of Poultry Producers of Central California in carrying on its purposes and powers as provided herein on a general non-profit basis for Poultry Producers of Central California and its members.*"

By the end of 1942 Appellant had ceased all activities except the publication of "Nulaid News" and the operation of its investment fund. If the continuance of either of these activities constituted "doing business" it follows that Appellant is subject to the franchise tax for the taxable year 1943, measured by its net income for the income year 1942, and that the action of the Franchise Tax Board must be sustained. Since we have concluded that publication of the trade magazine constituted "doing business" we deem it unnecessary to discuss in detail the operation of the investment fund.

"Nulaid News" was distributed to all members of the parent cooperative and to a relatively few outside subscribers such as agricultural schools and libraries. The magazine contained news of the cooperative and its members, articles about the poultry industry generally, particularly concerning matters of research and scientific developments in the industry, and advertising. Income was derived principally from annual \$1.00 subscription charges collected by the cooperative from each of its members and paid to Appellant and from advertising placed by suppliers to the cooperative and its members. In addition, revenue was derived from \$1.00 subscriptions sold to nonmembers and from institutional advertising placed by the cooperative. At the end of each year any net operating income from the magazine was credited to the cooperative and prorated to the members in proportion to their patronage with the cooperative. The operating statement for

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"Nulaid News" for the year 1943 is as follows:

Subscriptions:

Charge to Poultry Producers for members' subscriptions	\$9,113.57	
Schools, libraries, etc.	<u>169.97</u>	\$9,283.54

Advertising income:

Suppliers	\$8,000.55	
Poultry Producers	<u>990.00</u>	<u>8,990.55</u>

Total

\$18,274.09

Operating costs:

Administrative labor	\$2,106.00	
Office labor	2,148.95	
Printing and mailing	<u>7,411.29</u>	<u>\$11,666.24</u>

Net operating income transferred
to Poultry Producers

\$ 6,607.85

As defined in Section 5 of the Bank and Corporation Franchise Tax Act (now Section 23101 of the Revenue and Taxation Code) the term "doing business" means "actively engaging in any transaction for the purpose of financial or pecuniary gain or profit." As the basis for its contention that the publication of "Nulaid News" did not constitute doing business as so defined, Appellant argues that it acted merely as a service department or auxiliary of the parent cooperative and that the income therefrom was not profit, but tended only to reduce the amounts contributed by the cooperative toward the cost of publication. The substance of this argument is that Appellant's corporate status should be disregarded and the activities of Appellant considered the activities of the cooperative.

The Appellant's claim of identity with its parent cooperative for tax purposes is incompatible with the decided cases since it is the rule that whatever the purpose of the corporation is, "so long as that purpose is the equivalent of business activity ..., the corporation remains a separate taxable entity." Moline Properties v. Commissioner, 319 U. S. 436, 439. See also National Carbide Corporation v. Commissioner, 336 U. S. 422; Burnet v. Commonwealth, 287 U. S. 415.

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Since Appellant must be treated as a separate entity the taking of Appellant's profits by the parent cooperative by virtue of its ownership of Appellant is of no significance in determining the nature of Appellant's activities. When so viewed it is clear that the publication of a trade magazine from which Appellant derived gross income of \$18,274.09 and a net profit of \$6,607.85 for the year 1943 was an activity engaged in for the "purpose of financial or pecuniary gain or profit," Hise v. McColgan, 24 Cal. 2d 147; Golden State Theatre & Realty Corp. v. Johnson, 21 Cal. 2d 493; People v. Alexander Goldstein Co., 66 Cal. App. 2d 771.)

Our conclusions herein make it unnecessary to decide the Franchise Tax Board's secondary contention that Appellant is barred by the statute of limitations from claiming a refund or credit in the amount of the self-assessed tax paid by it for the taxable year 1943.

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 Section 25667 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protests of Producers Company, Ltd., to proposed assessments of additional franchise tax in the amounts of \$5,102.64 and \$2,238.66 for the taxable years 1942 and 1943, respectively, be and the same is hereby sustained.

Done at Sacramento, California. this 15th day of December, 1954, by the State Board of Equalization.

Geo. R. Reilly, Chairman

J. H. Quinn, Member

Paul R. Leake, Member

_____, Member

_____, Member

ATTEST: Thomas H. T. Morrow, Acting Secretary