



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
AVCAR LEASING, INC.)

For Appellant: Joseph Gingerich
Attorney at Law

For Respondent: Jon Jensen
Counsel

O P I N I O N

This appeal is made pursuant to section 25666 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Avcar Leasing, Inc., against a proposed assessment of additional franchise tax in the amount of \$755.64 for the income year ended June 30, 1977.

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The issue presented by this appeal is whether respondent properly classified appellant as a financial corporation within the meaning of section 23183 of the Revenue and Taxation Code, as it existed for the income year in issue, ^{1/} thereby making **it taxable** at the rate applicable to banks and financial corporations, rather than at the lesser rate applicable to general corporations.

Appellant, a California corporation located in the San Jose area, is engaged **in** the business of leasing automobiles. During its 1976-1977 fiscal year, appellant held outstanding leases on automobiles worth **\$1,570,000** and received gross lease payments in excess of \$320,000. Appellant does not maintain a standing inventory of automobiles; rather, it invites its customers to lease the vehicles of their choice which it then procures at the time of the lease. Upon examination of its **business**, respondent concluded that appellant's profit is derived from the terms of its leasing arrangements, rather than from the disposition of the automobiles. Appellant's clientele are screened as to their creditworthiness and are responsible for the maintenance, repair, licensing, registration, and insuring of the leased vehicles.,

In computing its California franchise tax liability for the income year in issue, appellant used the rate applicable to general corporations. Upon its review of the relevant factors, however, respondent determined that appellant was a financial corporation and, therefore, taxable at the same rate as banks. Appellant **protested the** resulting proposed assessment

1/ AB 66 (Stats. 1979, Ch. 1150), operative for income years beginning on or after January 1, 1979, added subdivision (b), quoted below, to section 23183. Unless otherwise noted, all references herein to section **23183** are to that section as it existed during the income year in issue.

(b) For purposes of this article, the term "financial corporation" does not include any corporation, including a wholly owned subsidiary of a bank or bank holding company, if the principal business activity of such entity consists of **leasing tangible** personal property.,

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of additional tax issued by respondent; respondent's denial of that protest gave rise to this appeal.

The "financial corporation" classification (Rev. & Tax. Code, § 23183, et seq.) was created by the Legislature to comply with the federal statute (12 U.S.C.A. § 548) prohibiting discrimination between national banks and other financial corporations. (Crown Finance Corp. v. McColgan, 23 Cal.2d 280 [144 P.2d 331] (1943); Marble Mortgage Co. v. Franchise Tax Board, 241 Cal.App.2d 26 [50 Cal.Rptr. 345] (1966)) While the term is not defined in the statute, the courts have developed a two-part test which must be met before a corporation may be classified as a financial corporation under section 23183: (i) it must deal in money or moneyed capital as distinguished from other commodities (The Morris Plan Co. v. Johnson, 37 Cal.App.2d 621 [100 P.2d 493] (1940); and (ii) it must be in substantial competition with national banks. (Crown Finance Corp. v. McColgan, supra.) Respondent's determination that a corporation is a financial corporation is presumed correct, and the burden is upon appellant to show that it is not a financial corporation. (Appeal of Atlas Acceptance Corporation, Cal. St. Bd. of Equal., July 29, 1981; Appeals of The Diners' Club, Inc., Cal. St. Bd. of Equal., Sept. 1, 1967.)

Appellant's first argument, while unclearly framed, appears to be that it does not deal in money or moneyed capital because its profits are principally generated from the sale of automobiles, and not from its leasing arrangements. Appellant's assertion is unsupported by any documentation and is in direct contravention to respondent's conclusion that appellant's profits are derived from the leasing, and not the sale, of automobiles. Consequently, in accordance with the well established principle that a presumption of correctness attends respondent's determinations as to issues of fact, and that the taxpayer has the burden of proving such determinations erroneous (Appeal of Janice Rule, Cal. St. Bd. of Equal., Oct. 6, 1976; Appeal of Robert C. and Marian Thomas, Cal. St. Bd. of Equal., April 20, 1955), we must conclude that appellant's profits are generated from the leasing of automobiles, rather than their sale. In M & M Leasing Corp. v. Seattle First Nat. Bank, 563 F.2d 1377 (9th Cir. 1977), cert. den., 435 U.S. 956 [57 L.Ed.2d 1121] (1978), the court held that leases of a type virtually indistinguishable from those in issue here were functionally

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interchangeable with secured loans. ^{2/} We conclude, therefore, that appellant deals in money or moneyed capital.

Having determined that appellant satisfies the first part of the aforementioned two-part test, the only remaining question is whether appellant's business was in substantial competition with national banks during the appeal year. If appellant's operations did constitute such competition, then we are required to **sustain** respondent's determination that appellant was a financial corporation taxable at the same rate applicable to banks.

Competition may arise from the employment of capital invested by individuals or institutions in those classes of investments engaged in by national banks. (First Nat. Bank v. Louisiana Tax Commission, 289 U.S. 60 [77 L.Ed. 1030] (1933); First Nat. Bank v. Hartford, 273 U.S. 548 [71 L.Ed. 767] (1927); Minnesota v. First Nat. Bank, 273 U.S. 561 [71 L.Ed. 774] (1927).) After a careful review of the record on appeal, and for the specific reasons set forth below, we conclude that appellant was involved in substantial competition with national banks and that respondent's action in this matter must be sustained.

2/ In describing vehicle leases which are equivalent to secured loans, a publication of the Federal Reserve states as follows:

In each case there is a sum certain in amount. This sum includes the acquisition cost of the vehicle and the cost of financing and is recovered through a series of noncancellable deferred payments. The term of the payment period in both cases is 24 to 36, or recently to 48 months. The vehicle **serves** as a type of collateral to guarantee payment of both the installment loan and the lease. Both forms of financing are applied to a specific automobile that is chosen prior to preparation of the document All attributes of ownership pass to the lessee who is responsible for servicing, insurance, and depreciation.

(Automobile Leasing as an Activity for Bank Holding Companies, Fed. Reserve Bull., Nov. 1976, 930, 932.)

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Whenever capital is employed either by a business or by private investors in the same type of transactions as those in which national banks engage and in the same locality in which they do business, those businesses or private investors are acting in competition with national banks. (See First Nat. Bank v. Louisiana Tax Commission, supra; First Nat. Bank v. Hartford, supra.) One such type or class of investment in which national banks engage is the leasing of personal property. (M & M Leasing Corp. v. Seattle First Nat. Bank, supra.) National banks have specific authorization to engage in the leasing of motor vehicles and other personal property (12 C.F.R. § 7.3400 ^{3/}), and there exists substantive documentation demonstrating that national banks were heavily engaged in such leasing during the appeal year. In M & M Leasing Corp. v. Seattle First Nat. Bank, supra, a case decided in 1977, the court noted as follows:

today over 1000 national banks are engaged in the leasing of personal property which has an aggregate value in excess of \$2 billion. Thus, although much of this growth has occurred in the 1970's and resulted from the entrance of national banks into the field of motor vehicle leasing, it is clear that leasing at present is a significant part of the business of national banks. (563 F.2d 1377, 1 3 8 2 .)

Specifically, during the period in issue, First National Bank of San Jose, a national bank operating in the same locality as appellant, was engaged in the leasing of vehicles. (Automobile Leasing as an Activity for Bank Holding Companies, supra, at p. 935.)

3/ During the period in issue, 12 C.F.R. § 7.3400 provided, in pertinent part, as follows:

A national bank may become the owner or lessor of personal property acquired upon the specific request and for the use of a customer and may incur such additional obligations as may be incident to becoming an owner and lessor of such property. . . .

12 C.F.R. § 7.7376, as it existed during the period in issue, authorized an operating subsidiary of a national bank to "lease property."

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As noted above, competition between national banks and private investors exists whenever both engage in seeking and securing, in the same locality, capital investments of the same class which are substantial in amount. (First Nat. Bank o. Hartford, supra; Appeal of Atlas Acceptance Corporation, supra.) Accordingly, since appellant was involved in the business of leasing personal-property, an **activity engaged** in by national banks, we must find that **appellant** was in competition with national banks and that respondent properly classified it as a "financial corporation." ⁴⁷ That appellant's operations were significant enough to find that it was **in substantial** competition with **national** banks is evidenced by the fact that, during the **income** year in issue, it held outstanding Leases on automobiles worth **\$1,570,000** and received gross lease payments in excess of \$320,000.

⁴⁷ Pursuant to subdivision (b) of section 23183, operative for income years beginning on or after January 1, 1979, appellant would apparently no longer qualify as a "financial corporation."

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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 protest of Avcar Leasing, Inc., against a proposed assessment of additional franchise tax in the amount of \$755.64 for the income year ended June 30, 1977, be and the same is hereby sustained.

Done at Sacramento, California, this 31st day of March, 1982, by the State Board of Equalization, with Board Members Mr. Reilly, Mr. Dronenburg, and Mr. Nevins present.

_____, Chairman
George R. Reilly, Member
Ernest J. Dronenburg, Jr., Member
Richard Nevins, Member
_____, Member