

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA



In the Matter of the Appeal of)
BURNHAM EXPLORATION COMPANY)

Appearances:

For Appellant: Barker, Smiley and Keithly, its Attorneys

For Respondent: Chas. J. McColgan, Franchise Tax Commissioner

O P I N I O N

This is an appeal pursuant to Section 25 of the Bank and Corporation Franchise Tax Act (Stats. 1929, Chap. 13, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of Burnham Exploration Company, a corporation, against a proposed assessment of additional tax in the amount of \$9,135.76. The assessment of additional tax was proposed by the Commissioner partly due to the fact that the Commissioner included in Appellant's income for the taxable year ended December 31, 1930, on the basis of which Appellant's tax liability was computed, interest on United States Treasury Certificates received by Appellant during said year in the amount of \$6,590.53.

Whether the Commissioner acted properly in thus including interest from United States Treasury Certificates in the income of Appellant for the taxable year ended December 31, 1930 is the sole problem involved in this appeal.

In the Appeal of Homestake Mining Company decided by us on this date, we held that the Act contemplated the inclusion of interest from federal, state and municipal bonds in the computation of the income by which the tax imposed by the Act is to be measured, although said bonds, and the interest therefrom, are exempt from taxation. Further, we held that such inclusion was constitutional for the reason that the tax imposed by the Act is not an income tax but an excise tax, and, consequently, tax exempt income could be included in the measurement of the tax.

In thus holding, we relied upon the cases of Flint v. Stone Tracy Company, 220 U.S. 601, Educational Films Corporation v. Ward, 28 U.S. 379, and Pacific Company, Ltd. v. Johnson, 212 Cal. 148, (affirmed by the United States Supreme Court, U. S. Daily, April 12, 1932, page 6). In the last cited case, the inclusion of interest from tax exempt improvement district bonds in the computation of the income by which the tax provided in the Act is to be measured, was held valid.

We are of the opinion that our decision in the above appeal

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should be regarded as controlling our decision in the instant appeal.

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 the Franchise Tax Commissioner, Chas. J. McColgan, in overruling the protest of Burnham Exploration Company, a corporation against a proposed assessment of an additional tax in the amount of \$9,135.76, based upon the return of -said corporation for the year ended December 31, 1930, under Chapter 13, Statutes of 1929 be and the same is hereby sustained.

Done at Sacramento, California, this 11th day of May, 1932, by the State Board of Equalization.

R. E. Collins, Chairman
Jno. C. Corbett, Member
Fred E. Stewart, Member
H. G. Cattell, Member

ATTEST: Dixwell L. Pierce, Secretary