



38-SBE-013

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
FOURTH AND MARKET STREET GARAGE )

Appearances:

For Appellant: Chas. J. Evans, its President; Nathan Spivock, Accountant  
For Respondent: W. M. Walsh, Assistant Franchise Tax Commissioner; Frank M. Keesling, Franchise Tax Counsel

O P I N I O N

This appeal is made pursuant to Section 25 of the Bank and Corporation Franchise Tax Act (Chapter 13, Statutes of 1929, as amended) from the action of the Franchise Tax Commissioner in overruling the protests of the Fourth and Market Street Garage, a corporation, to his proposed assessments of additional tax in the amounts of \$69.03 and \$107 for the taxable years ended April 30, 1936, and April 30, 1937, respectively.

The Appellant claimed deductions in its returns of income for the years ended April 30, 1935, and April 30, 1936, in the amounts of \$3,600 and \$7,500, respectively, as salary paid to Mr. Chas. J. Evans, its President and General Manager. The Commissioner allowed deductions for the salary of Mr. Evans in the amounts of \$1,800 for the year ended April 30, 1935, and \$5,000 for the following fiscal year, disallowed the balance of the deduction claimed by Appellant for each year and upon the basis of that action levied his proposed assessments. The only question presented herein for our consideration is the validity of this action of the Commissioner.

The Appellant, a family corporation, conducts a public garage business in the City and County of San Francisco. During the income year ended April 30, 1935, it received gross income from its operations in the amount of \$69,291.53 from which it derived a net income of \$525.80. In the following income year its gross income and net income were \$95,171.80 and \$3,809.48, respectively. Dividends were not declared or paid by it during either year.

To establish that the salary paid by Appellant to Mr. Evans was comparable in amount to that paid by like enterprises for services similar to those performed by him, evidence was offered showing that two garages in the City and County of San Francisco with areas about one-half of that of Appellant's garages paid their managers \$375 and \$400 a month, respectively. No evidence was offered by Appellant, however, as to the amount

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of business conducted by those garages. While no reference was made to the matter, it appears safe to assume that the managers of those garages devoted their entire time to the business affairs of their respective employers, whereas Mr. Evans divided his time between Appellant's affairs and those of the Evans Auto and Truck Rental Company of which he was also the President and General Manager.

The Appellant is entitled under Section 8(a) of the Bank and Corporation Franchise Tax Act to deductions from its gross income for the income years in question of amounts representing reasonable allowances of compensation to Mr. Evans for personal services rendered by him during those years. While we are unable to conclude from the facts set forth herein that the Commissioner acted unreasonably in limiting the allowance for the salary of Mr. Evans to \$5,000 for the income year ended April 30, 1936, we are of the opinion that his action in disallowing \$1,800 of the deduction of \$3,600 claimed by the Appellant for the income year ended April 30, 1935, was improper.

The Appellant's business was, it is true, larger during the income year ended April 30, 1936, than during the prior income year, but the amount of \$1,800 allowed as salary by the Commissioner for that prior year is clearly an inadequate compensation for the service performed by Mr. Evans. The difference in the amount of business done during the two years does not, in our opinion, justify the disallowance of any portion of the salary deduction of \$3,600 claimed by the Appellant. In the case of the income year ended April 30, 1936, however, the facts hereinabove set forth respecting the size of the Appellant's business, the division of Mr. Evans' time between the business affairs of the Appellant and the Evans auto and Truck Rental Company and the salary paid to him for the service to it (See Appeal of Evans Auto and Truck Rental Company, decided this day) do not, we believe, establish that the action of the Commissioner in allowing a deduction for the salary of Mr. Evans in the amount of 35,000, rather than in the amount of \$7,500 claimed by the Appellant, was unwarranted.

The action of the Commissioner with respect to his proposed additional assessment for the taxable year ended April 30; 1936, based upon Appellant's income for the year ended April 30, 1935, should, accordingly, be reversed and his action with respect to the assessment for the taxable year ended April 30, 1937 based upon Appellant's income for the year ended April 30, 1936, should be sustained.

ORDER

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 Chas. J. McColgan, Franchise Tax Commissioner, in overruling the protest of the Fourth and Market Street Garage, a corporation, to a proposed assessment of additional tax in the amount of \$69.03

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for the taxable year ended April 30, 1936, be and the same is hereby reversed and that the action of said Commissioner in overruling the protest of said corporation to a proposed assessment of additional tax in the amount of \$107 for the taxable year ended April 30, 1937, be and the same is hereby sustained.

Done at Los Angeles, California, this 14th day of December, 1938, by the State Board of Equalization.

Richard E. Collins, Chairman  
Wm. G. Bonelli, Member  
Andrew J. Gallagher, Member

ATTEST: Dixwell L. Pierce, Secretary