



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
LEONARD W. BUCK)

Appearances:

For Appellant: Homer H. Tooley, Certified Public Accountant

For Respondent: W. M. Walsh, Assistant Franchise Tax Commissioner

O P I N I O N

This appeal is made pursuant to Section 19 of the Personal Income Tax Act (Chapter 329, Statutes of 1935, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of Leonard W. Buck to a proposed assessment of additional tax in the amount of \$2,578.99 for the taxable year ended December 31, 1935.

During the year 1935 the Appellant received dividends aggregating \$38,530.80 on stock which he owned in the Belridge Oil Company. The dividends were paid pursuant to a resolution adopted by the Board of Directors of the company on January 9, 1934, declaring special dividends of five cents per share, payable between the tenth and fifteenth days of the month to the stockholders of record on the tenth day of January, 1934, and the tenth day of each month thereafter "until and unless otherwise ordered by the Board of Directors." The Appellant contends that since the dividends in question were declared in 1934 out of surplus accumulated prior to January 1, 1935, they constitute income which accrued prior to that time and, accordingly, under the provisions of Article 36-1 of the Regulations relating to the Personal Income Tax Act of 1935, are not subject to the tax.

The Appellant's argument, however, runs counter to the rule that income does not accrue until there exists an unconditional right to receive it. United States v. Safety Car Heating & Lighting Co., 297 U. S. 88, H. Liebes & Co. v. Commissioner of Internal Revenue; 90 F. (2d) 932, Workman v. Commissioner of Internal Revenue, 41 F. (2d) 139. The resolution of January 9, 1934, did not create any certain or vested right on the part of the stockholders, since by its terms the payment of the monthly dividends was subject to whatever further action might be taken by the Board of Directors. The resolution, being qualified in this manner, did not constitute a complete declaration of any dividends and did not create a final, irrevocable and enforceable debt of the corporation. United States v. Southwestern Portland Cement Co., 97 F. (2d) 413, Maloney v. Western Cooperation Co., 103 F. (2d) 992. As it does not appear that any other

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affirmative action was taken during 1934 with respect to the dividends to be paid in 1935, it follows that those dividends cannot, consistently with the foregoing authorities, be held to have accrued prior to January 1, 1935.

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 Chas. J. McColgan, Franchise Tax Commissioner, in overruling the protest of Leonard W. Buck to a proposed assessment of additional tax in the amount of \$2,578.99 for: the year ended. December 31, 1935, pursuant to Chapter 329, Statutes of 1935, as amended, be and the same is hereby sustained.

Done at Sacramento, California, this 15th day of December, 1941, by the State Board of Equalization.

George R. Reilly, Member
Fred E. Stewart, Member
Wm. G. Bonelli, Member

ATTEST: Dixwell L. Pierce, Secretary