



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
SWIFT AND COMPANY)

Appearances:

For Appellant: T. L. Smart, its Attorney

For Respondent: James J. Arditto, 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 protest of Swift and Company to his proposed assessment of additional tax in the amount of \$1,294.98, for the taxable year ended December 31, 1937, based upon income of the Company for the year ended December 31, 1936.

The facts are set forth in Respondent's brief, the correctness of which Appellant admits, are as follows:

The Appellant is a foreign corporation engaged in the business of general meat packing, with its principal place of business located outside California. During the year 1936 it paid or incurred interest expense in the amount of \$1,856,100.06. Of this amount \$393,119.21 was incurred to purchase and carry investments. In accordance with the rulings of the Franchise Tax Commissioner, Appellant did not include in the net income which served as the measure of its tax for 1937 income from intangibles whose situs was outside California. It did, however, include the entire amount of interest paid or incurred with respect to the investment indebtedness above-mentioned in its interest expense for the year 1936, and, accordingly, deducted the amount of that interest from its gross income in arriving at its net income for the year.

Two questions are presented by this appeal:

- "1. Is Appellant entitled to deduct interest expense on indebtedness incurred to purchase and carry investments, the income from which is not included in its California income?
- "2. Is Appellant entitled to amortize the cost of its Illinois charter over the life of the charter?"

The problem involved in the first question have previously

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been considered by this Board in Appeal of Great Northern Railway Company, decided November 15, 1939. On that appeal we held, under substantially similar facts, that the position of the Commissioner should be sustained notwithstanding Section 8(b) of the Bank and Corporation Franchise Tax Act, which provided during the period for which the additional tax was assessed that in computing net income a deduction is allowable for

"all interest paid or accrued during the income year on indebtedness of the taxpayer.!"

The ground upon which our conclusion was reached was that if, Under the law, the additional tax was due, we were not required to pass upon the manner in which he determined an additional amount of tax to be due. We held that the additional tax was due, sustaining the Commissioner upon the ground that his action, when considered as a method of allocation employed pursuant to Section 10 of the Act, was, quoting from Section 10, "fairly calculated to assign to the State the portion of net income reasonably attributable to business done within this State and to avoid subjecting the taxpayer to double taxation." We believe, accordingly, that the Commissioner may add to the Appellant's net income as determined by it the amount of interest paid or incurred to purchase and carry said investments and previously deducted from its gross income.

This being the ground of our decision, it is unnecessary to pass upon the contention of Appellant that under Section 8(b) of the Bank and Corporation Franchise Tax Act the deduction should be allowed. Corporation of America v. Johnson, 7 Cal. (2d) 295, is cited by Appellant in support of his contention that under Section 8(b) the deduction should have been allowed. But, as our conclusion is not based upon an interpretation of Section 8(b) whatever bearing this and other cases cited by Appellant might have on the proper construction of the Section is immaterial. For the same reason, Appellant's argument based on the 1937 amendment to Section 8(b) imposing certain limitations to the deductibility of interest, cannot be sustained, regardless of whatever merit this argument might have if our conclusion were based upon an interpretation of this Section.

We now come to the second question, whether Appellant is entitled to claim pursuant to Section 8(a) of the Bank and Corp. Franchise Tax Act, a pro rata deduction of the cost of its charter as an ordinary and necessary expense paid or incurred during the income year in carrying on business. The deduction claimed is in the amount of \$1,000. Respondent in his brief concedes that the deduction was in order, provided proper evidence is presented that the charter cost of \$75,000.00 does not include any expense other than attorney's and charter fees. The Appellant has submitted a copy of the certificate filed with the Illinois Secretary of State certifying to the action of the stockholders at the annual meeting held January 2, 1913, at which meeting a resolution was adopted extending the term of the corporate existence of Appellant to January 1, 1984. Counsel states: (Page 2, Reply Brief of Appellant)

"The statutory fee payable to the Secretary of State of

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Illinois for filing this certificate was \$75,046, which fee was paid by Appellant to the Secretary of State of Illinois on November 5, 1913, the date said certificate was filed, as shown by the receipt of the Secretary of State, stamped at the top of said certificate. The copy of said certificate herewith submitted was duly sworn to by W. H. Soutter, Assistant Secretary of Swift and Company. The fee was based on the amount of the authorized capital stock of Appellant, namely \$150,000.00 and was computed in accordance with the statute, at the rate of 1/20 of one per cent on said amount, plus \$46 incidental filing fees. The said fee of \$75,000 did not include any expense, and the entire amount was fixed by statute of the State of Illinois, as above stated."

We believe this is sufficient evidence that the amount paid is deductible under Section 8(a).

We are of the opinion, accordingly, that the action of the Respondent in overruling the Appellant's protest against the proposed assessment of additional tax in the amount of \$1,294.98 for the year ended December 31, 1937, should be sustained, except as to that part measured by the disallowed deduction of a portion of Appellant's charter fee, as to which portion the action of the Respondent should be reversed.

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 Hon. Chas. J. McColgan, Franchise Tax Commissioner, in overruling the protest of Swift and Company to his proposed assessment of additional tax in the amount of \$1,294.98 for the taxable year ended December 31, 1937, based upon the income of the Company for the year ended December 31, 1936, pursuant to Chapter 13, Statutes of 1929 as amended, be and the same hereby modified as follows:

Said Commissioner is hereby directed to allow the charter fee deduction of \$1,000 in computing tax for the taxable year 1937. In all other respects the action of said Commissioner is hereby affirmed.

Done at Sacramento, California, this 15th day of July, 1943, by the State Board of Equalization.

R. E. Collins, Chairman
J. H. Quinn, Member
Geo. R. Reilly, Member

ATTEST: Dixwell L. Pierce