



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
SOLANO COUNTY TITLE COMPANY)

Appearances:

For Appellant: Charles H. Petersen, Certified Public
Accountant

For Respondent: W. M. Walsh, Assistant Franchise Tax Com-
missioner; 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 Solano County Title Company to a proposed assessment of additional tax in the amount of \$26.62 for the taxable year ended December 31, 1939.

During 1938 Appellant received \$1,224 as a dividend from the Title Guaranty Company of Solano County, a corporation whose business was carried on wholly within this State and all of whose capital stock was owned by Appellant. The income of that company consisted solely of income arising from its business, such as fees for title reports, and dividends received by it by virtue of its ownership of some of Appellant's capital stock. The entire \$1,224 was deducted from gross income by Appellant on its return. The Commissioner determined, however, that the dividend was deductible only to the extent of 45.61765% thereof on the theory that only that portion of the income of the Title Guaranty Company of Solano County had been included in the measure of the tax on that corporation.

Appellant contends that its deduction of the entire amount of the dividend is authorized by Section 8(h) of the Bank and Corporation Franchise Tax Act allowing the deduction from gross income of

"Dividends received during the income year declared from income which has been included in the measure of the tax imposed by this act upon the bank or corporation declaring the dividends, or from income which has been taxed under the provisions of the Corporation Income Tax Act of 1937 to the corporation declaring the dividends,"

The Commissioner, however, argues that the deduction is limited to the amount of dividends declared from earnings or profits which have been included in net income subjected to tax

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under the Act to the declaror corporation.

In Burton E. Green Investment Company v. McColgan, 60 Cal. App. (2d) 224 (hearing in California Supreme Court denied on October 11, 1943), it was held that the word "income" as used in the phrase "declared from income which has been included in the measure of the tax" in Section 8(h) of the Act means gross income with the result that a dividend paid by a corporation that reported all its income as gross income for franchise tax purposes is deductible from the gross income of the recipient corporation notwithstanding that the paying corporation, in computing its net income, had taken a deduction of 27½ per centum of its gross income for depletion, pursuant to Section 8(g) of the Act, the amount of such deduction exceeding the amount of depletion sustained for the year computed on the basis of cost.

In the matter here under consideration the declaror corporation engaged in business only in this State and reported its total income for 1938 as gross income in its franchise tax return. The dividend in question having been declared from such income it necessarily follows on the authority of the Green Investment Company case, that the dividend received by Appellant from the Title Guaranty Company of Solano County was "declared from income which has been included in the measure of the tax imposed by this act upon the bank or corporation declaring the dividends," and is therefore deductible in its entirety by the Appellant,

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 Charles J. McColgan, Franchise Tax Commissioner, in overruling the protest of Solano County Title Company to a proposed assessment of additional tax in the amount of \$26.62 for the taxable year ended December 31, 1939, pursuant to Chapter 13, Statutes of 1929, as amended, be and the same is hereby reversed. Such action is hereby set aside and the Commissioner is hereby directed to proceed in conformity with this order.

Done at Sacramento, California, this 11th day of May, 1944, by the State Board of Equalization.

R. E. Collins, Chairman
Wm. G. Bonelli; Member
Harry B. Riley; Member
Geo. R. Reilly, Member
J. H. Quinn, Member

ATTEST: Dixwell L. Pierce, Secretary