



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
OGDEN S. and LOU V. SELLS }

Appearances:

For Appellant: Charles M. Ross, Certified Public Accountant.
For Respondent: W.M. Walsh, Assistant Franchise Tax Commissioner; James J. Arditto, Franchise Tax Counsel.

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 Ogden S. and Lou V. Sells to a proposed assessment of additional tax in the amount of 8364.61 for the taxable year ended December 31, 1935.

During 1935 Ogden S. Sells paid to the Food Machinery Corporation (Formerly the John Bean Manufacturing Co,) the amount of \$14,513.87 in settlement of a contractual obligation to that Corporation and deducted that amount from gross income in the joint return of himself and his wife for that year. The Appellants reported on the cash receipts and disbursements basis. The Commissioner disallowed the deduction on the ground that the obligation in question accrued prior to January 1, 1935, the propriety of such disallowance being the only question presented herein. Certain other adjustments made by the Commissioner have not been questioned by the Appellants.

In disallowing the deduction the Commissioner acted pursuant to that portion of Article 36-1 of his Regulations Relating to the Personal Income Tax Act of 1935 providing that "obligations incurred prior to January 1, 1935, may not be deducted, even though paid on or after that date by a taxpayer reporting on the cash receipts and disbursements basis." Since it has been held in Dillman v. McCullough, 63 A.C.A 563 (hearing in California Supreme Court denied May 18, 1944), that this ruling was not authorized by the Act, this action of the Commissioner must 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

Appeal of Ogden S. and Lou V. Sells

Chas. J. McColgan, Franchise Tax Commissioner, in overruling the protest of Ogden S. and Lou V. Sells to a proposed assessment of additional tax in the amount of \$364.61 for the taxable year ended December 31, 1935, pursuant to Chapter 329, Statutes of 1935, as amended, be and the same is hereby modified as follows:

Said Commissioner is hereby directed to allow the deduction from gross income of the amount of \$14,513.87 paid by said Ogden S. Sells in 1935 to the Food Machinery Corporation (formerly the John Bean Manufacturing Co.); in all other respects the said action of the Commissioner is hereby sustained.

Done at Sacramento, California, this 19th day of July, 1944,
by the State Board of Equalization,

R. E. Collins, Chairman
Wm. G. Bonelli, Member
J. H. Quinn, Member

ATTEST: Dixwell L. Pierce, Secretary