



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of HEMET)
FEDERAL SAVINGS AND LOAN ASSOCIATION,)
QUAKER CITY FEDERAL SAVINGS AND LOAN)
ASSOCIATION, FIRST FEDERAL SAVINGS AND)
LOAN ASSOCIATION OF ALHAMBRA, and)
REPUBLIC FEDERAL SAVINGS AND LOAN)
ASSOCIATION)

Appearances:

For Appellants: Richard Fitzpatrick, Attorney at Law
For Respondent: W. M. Walsh, Assistant Franchise Tax
Commissioner; Edward Sarkisian, Associate
Tax Counsel

O P I N I O N

These appeals are made pursuant to Section 27 of the Bank and Corporation Franchise Tax Act (Chapter 13, Statutes of 1929, as amended) from the action of the Franchise Tax Commissioner in denying claims for refunds of taxes for the taxable year ended December 31, 1938. The Appellants and the amounts of their respective claims are Hemet Federal Savings and Loan Association, \$37.66; Quaker City Federal Savings and Loan Association, \$432.41; First Federal Savings and Loan Association of Alhambra, \$183.27; and Republic Federal Savings and Loan Association, \$490.11.

The Commissioner concedes that overpayments of tax were made in the amounts of the claims but contends that the Appellants are not entitled to refunds of those amounts. There is no dispute concerning the facts. Omitting certain matters which are immaterial to the determination of the controversy, the facts may be summarized as follows: Prior to 1938 the Associations were chartered and doing business under the California Building and Loan Association Act (Deering's General Laws, Act 986). They subsequently converted themselves into federal savings and loan associations pursuant to Section 12.11 of that Act and Section 5(c) of the Federal Home Owners' Loan Act of 1933 (12 U.S.C.A. § 1464), but the state associations were not dissolved. The overpayments were made by the building and loan associations, except in the case of the Hemet Federal Savings and Loan Association which, having been converted in January, 1938, made its return and was taxed in the year of its conversion and, accordingly, itself made the overpayment.

Section 27 of the Bank and Corporation Franchise Tax Act provides that the amount of an overpayment "...shall be credited against any taxes then due from the taxpayer under this act, and

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the balance shall be refunded to the taxpayer or its successor through reorganization, merger, or consolidation, or to stockholders upon dissolution." The Appellants fall within this Section, in our opinion, only if they are the successors through reorganization of the state associations from which they were converted.

The term "reorganization" is defined in Section 20(g) of the Act, but, as the Commissioner points out, only for the purposes of Sections 20 and 21, relating to the recognition of and the basis for determining gain or loss. We see no merit, however, in the Commissioner's contention that "Since no question of gain or loss or of basis arises herein, it is believed that the definition in Section 13(j) is controlling." (Commissioner's brief, page 3.) Section 13(j) expressly provides that the "term 'reorganization' as used in this section means..." and the definition which follows would, accordingly? have no more pertinency to the meaning of the term as used in Section 27 than would the definition appearing in Section 20(g).

Were we to uphold the Commissioner's position, the State would retain money admittedly collected in excess of that to which it was entitled. It is unnecessary for us to determine herein that in no case would the restriction in Section 27 above quoted preclude the refunding of an overpayment to some person or corporation. Certainly, however, the absence from Section 27 of any language incorporating for purposes of that Section the definition of "reorganization" contained in Section 13(j) and the express limitation of that definition to Section 13 do not clearly indicate any legislative intent that the definition applies as respects Section 27 so as to bar in the instant case refunds of the admitted overpayments.

Some effect must, of course, be given to the phrase "successor through reorganization." In view of the facts that the Legislature was providing for refunds of overpayments and failed to incorporate the definitions of "reorganization" made for other purposes, it seems to us that the lawmakers were far more concerned in Section 27 with preventing the granting of refunds to mere assignees, who might make a business of acquiring claims for overpayments of tax, than they were in excluding all claimants not meeting the technical requirements of those definitions.

The Act containing no definition of "reorganization" as used in Section 27, recourse must be had to the ordinary meaning of the term. It is defined generally in 15 Fletcher, Cyclopedi Corporations, Perm, Ed., Sec. 7201, as follows:

"The term 'reorganization' signifies the act or process of organizing anew. As applied to corporations, it denotes various proceedings and transactions by which a succession of corpora-

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"tions is brought about. Ordinarily it involves the creation of a new corporation to take over the assets and property and continue the business of the old one. This, however, is not necessarily the effect of a reorganization. The terms of the statute and the intention of the legislature and of the parties may be merely to continue the existing corporation without any dissolution, under the same or a different name and with the same or different powers, and under the same or a different management."

Whether the conversion of a state to a federal association may be regarded as a reorganization depends of course upon the character of the change resulting therefrom.

Each building and loan association had outstanding three types of securities, known as investment certificates, membership shares and guarantee capital stock. In the conversion of the association each holder of investment certificates or membership shares received in federal savings and loan association share accounts the full face value of his certificates or shares. Each holder of guarantee capital stock received federal share accounts in the amount calculated as his respective interest in the state association. It thus appears that after the conversion the former security holders of the state association enjoyed as nearly the same relative position in the federal association as could be arranged consistently with the plan of conversion.

Strong evidence of an extremely close connection or relationship between the two associations is afforded by the law of this State providing for the conversion. Section 12.11 of the California Building and Loan Association Act reads, in part, as follows:

"At the time when such conversion becomes effective as hereinbefore provided in this section 12.11 such association shall cease to be supervised by this State and all of the property of such association, including all of its right, title and interest in and to all property of every kind and character, whether real, personal or mixed, shall immediately, by operation of law and without any conveyance or transfer whatsoever and without any further act or deed, be vested in said association under its new name and style as a Federal savings and loan association and under its new jurisdiction; and said Federal savings and loan association shall have, hold and enjoy the same in its own right as fully and to the same extent as the same was possessed, held and enjoyed by it as a State association and said Federal savings and loan association shall continue responsible for all of the obligations of said State association to

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"the same extent as though said conversion had not taken place; it being expressly declared that such Federal savings and loan association shall be merely a continuation of such State association under a new name and new jurisdiction and such revision of its corporate structure as may be considered necessary for its proper operation under said new jurisdiction." (Underscoring added.)

In the light of the foregoing considerations, a federal association is properly to be regarded, in our opinion, as a "successor through reorganization" of a state association within the meaning of Section 27. We believe, accordingly, that the Appellants are entitled to refunds of the overpayments of tax made by or with respect to the operations of their respective predecessor state building and loan associations.

Mere mention may be made of one other factor. In their opening brief, Appellants stress the fact that taxes were collected from them by the Commissioner on the basis that they were reorganizations of the state associations. The Commissioner replied merely that this contention "...is answered fully in Merton 'Law of Federal Taxation' (sic) Vol. 10, Sec. 60.14." (Commissioner's brief, page 3.) That section states the general rule that the government is not bound or estopped by erroneous rulings of its officials or agents. While we are not entirely convinced that the contention is so easily answered, in view of our conclusion as to the construction of Section 27 the matter need not be further considered.

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 denying the claims of Hemet Federal Savings and Loan Association, Quaker City Federal Savings and Loan Association, First Federal Savings and Loan Association of Alhambra, and Republic Federal Savings and Loan Association for refunds of tax in the amounts of \$637.66, \$432.41, \$183.27, and \$490.11, respectively, for the taxable year ended December 31, 1938, pursuant to Chapter 13, Statutes of 1929, as amended, be and the same is hereby reversed. The Commissioner is **hereby** directed to allow a credit to each of said associations against any taxes due from it in an amount as follows: Hemet Federal Savings and Loan Association, \$37.66; Quaker City Federal Savings and Loan Association, \$432.41; First Federal Savings and Loan Association, \$183.27; and Republic Federal Savings and Loan Association \$490.11; and to refund the balance of said amount to it and otherwise to proceed in conformity with this order.

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Done at Los Angeles, California, this 14th day of November,
1945, by the State Board of Equalization.

Wm. G. Bonelli, Member
J. H. Quinn, Member
Geo. R. Reilly, Member

ATTEST: F. S. Wahrhaftig, Acting Secretary