MINUTES OF THE MEETING
TAXATION COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

March 29, 1985 - P.M.

The fifty-sixth meeting of the Taxation Committee was called to order in room 312-1 of the state capitol at 8:35 P.M. by Chairman Gerry Devlin.

ROLL CALL: All members were present as were Dave Bohyer, Researcher for the Legislative Council, and Alice Omang, secretary.

CONSIDERATION OF HOUSE BILL 826: Representative Ellerd, District 77, Bozeman, commented that for fourteen years, he represented West Yellowstone, but since reapportionment, he does not represent them now. He informed the committee that they have a serious problem in trying to make their ends meet and this bill would allow them to establish a resort tax after a vote of their electorate and this would help provide property tax relief. He advised that West Yellowstone cannot generate enough money from the tourists, who come there during the summer to meet their needs.

Cal Dunbar, Councilman for the Town of West Yellowstone, indicated that he has been a councilman for fourteen years and his testimony is contained in Exhibit 1.

Bob Jacklin, Councilman for the Town of West Yellowstone, stated that he operates a fishing tackle business and, in this community, $2.5 million is generated in business in the summer and they only have 750 people, who have to pay for all the roads, services, etc. He advised that their streets are in disrepair and there is no way that they can fix them and this is one of the first things the tourists coming into Montana from this direction see.

Kent Wilhelm, Councilman for the Town of West Yellowstone, stated that last year their expenditures were $313,000.00 and their total revenue was $296,000.00 and they figure with a 3% tax, they could raise $420,000.00. He continued that they need some property tax relief, they need major street repair, they need an extensive storm drainage system, they need a water system and have basic sewage system problems.

Walter Herman, an owner of a campground and an apartment house, informed the committee that everything in West Yellowstone is done on a volunteer basis - the fire department, the ambulance service and he thought they were the first community to have a volunteer police department. He urged the committee to pass this bill as they sure need help.

Gary Schorn, President of the Chamber of Commerce in West Yellowstone, stated that this legislation is very important to their community and to their business community in particular. He asked the committee to support this bill.

Alec Hanson, representing the Montana League of Cities and Towns, noted that 750 people paying property taxes cannot finance police and fire protection, water, sewer and sanitation services and other programs for 2½ million other people. He said that these people are asking for help and he urged the committee to please give it to them.

Senator Boylan stated that these people really need some help; they are an isolated community, but they do bear the tourist burden for the state of Montana. He told the committee that even buying the toilet paper for this many people has an impact on the community.

Senator John Anderson, District 37, testified that West Yellowstone has some of the finest people anywhere and some of the most dedicated and he urged the committee to give them an opportunity to help themselves.

Representative Keyser, District 74, noted that this is the southwest entrance to the state of Montana and he suggested that they can amend the bill to an elevation of no less than 7600 feet, an average snow fall of no less than 12 inches and a population of no more than 1500 if they want to make a definition of resort community.

There were no further proponents.

OPPONENTS: Phil Strope, an attorney, said he was the attorney they were talking about in the lawsuit and the

Billings judge initially held that local communities could create taxes, but the supreme court said that local governments could not create taxes, according to the 1972 constitution, which says that the power to tax shall never be surrendered, suspended or contracted away. He advised that the 1974 legislature passed a law that said that local government may not impose a tax on the sale of goods, services or income.

Don Judge, representing the Montana AFL-CIO, declared that they oppose any kind of a sales tax and this is a sales tax and it would be a crack in the door and there soon would be a window of opportunity to have a statewide sales tax.

There were no further opponents.

QUESTIONS ON HOUSE BILL 826: Representative Asay asked since there seems to be some question if this is legal, if there is such a thing as a special assessment that can be handled as the initial cost of doing business.

Representative Ellerd replied that he appreciated the suggestion, but they want to do this the way it is suppose to be done. He advised that he did not think that this is unconstitutional and he has heard that before.

There were no further questions.

Representative Ellerd concluded, saying that this bill would help the community of West Yellowstone and it is not a lawyer-relief bill and these people are certainly willing to help themselves.

EXECUTIVE SESSION

DISPOSITION OF HOUSE BILL 826: Representative Asay moved that this bill DO PASS. Representative Harp moved to amend the bill on page 2, line 17, by striking "10,000" and inserting "1,500". The motion carried with Representative Raney, Representative Koehnke, Representative Sands and Representative Cohen voting no.

Representative Asay moved that the bill DO PASS, AS AMENDED. The motion carried with Representative Schye, Representative Keenan, Representative Harrington, Representative Ream, Representative Raney, Representative Gilbert and Representative Williams voting no. The vote was 13 to 7.

CONSIDERATION OF HOUSE BILL 948: Representative Fritz, Missoula, said that this was a semi-sophisticated property tax on banks and other financial institutions and that this bill will try to regain some revenue that was lost before the bank share tax was repealed. He advised that the state has lost $7 million in revenue in any given year and this money went to local government.

PROPONENTS: Sam Ryan, representing the Montana Senior Citizens Association, contended that it was time that banks paid their fair share of taxes and help alieviate the shift to old people.

Earl Reiley, representing the Montana Senior Citizens' Association, urged passage of this bill, saying it would spread the tax burden around.

Paul Carpino, representing the Montana Low Income Coalition, declared that this bill is a means to more equitably share the taxes as it will allow the income of the financial institutions to be taxed.

Don Judge, representing the Montana AFL-CIO, stated that it was his understanding that the revenue generated from this bill would be $4.4 million in fiscal year 1986 and almost $5 million in fiscal year 1987 and 80% of that money would go to local governments and 20% to state governments and both could use the money right now.

There were no further proponents.

OPPONENTS: George Bennett, representing the Montana Bankers' Association, offered testimony in opposition to this bill. See Exhibit 2. He also offered Exhibit 3, which deals with the California state taxation of banking institutions.

George Anderson, a C.P.A. in Helena, testified that he had done a great deal of testimony relative to bank taxes and in the last year, they have been cooperating with the Department of Revenue and they had straightened out the financial institutions situation. Now, he continued, this bill comes along and confuses everything in the past. He contended that this is a very complicated bill with conflicting language and would be difficult to administrate. He urged the committee to kill the bill.

Pat Hooks, representing the savings and loans institutions in this state, stated that they are setting aside these people in one class and that there are a lot of corporations out there that are not going to pay the average personal property tax.

Dennis Burr, representing the Montana Taxpayers' Association, observed that since 1975, when the tax was declared unconstitutional, the legislature has passed new banking taxes, most of which have been thrown out and he urged the committee to keep this for a few years.

George Allen, representing the Montana Retailers' Association, stated that banks don't pay those taxes - borrowers pay those taxes and he urged the committee to oppose this bill.

Bob Murdo, representing the D. A. Davidson & Company, explained that it has been determined that they are a financial institution and that this bill would cause them many problems. He indicated that the language is vague, it is a confusing piece of legislation and is difficult to understand.

Gene Rice, Director of the Credit Union League, said that they feel that this bill is discriminatory as it singles out banks and financial institutions. He noted on page 2 that credit unions are exempt from this bill because they are already exempt from having a franchise tax imposed, but they feel it is a very discriminatory bill.

There were no further opponents.

QUESTIONS ON HOUSE BILL 948: Representative Williams asked George Bennett if he had implied that the Department of Revenue was behind this bill.

Mr. Bennett responded that he understood that the Department of Revenue's attorney helped draft this bill.

There were no further questions.

Representative Fritz stated that he did not want to discriminate against banks, but he also did not want to discriminate in favor of them either; and since 1979, they have gotten a break that other taxpayers have not enjoyed and he would like them to pay their fair share.

The hearing on this bill was closed.

EXECUTIVE SESSION:

DISPOSITION OF HOUSE BILL 948: Representative Iverson moved that this bill DO NOT PASS. Representative Asay made a substitute motion to TABLE this bill. The motion carried with Representative Raney, Representative Schye, Representative Keenan, Representative Harrington, Representative Cohen and Representative Ream voting no. The vote was 14 ayes and 6 noes.

DISPOSITION OF SENATE BILL 431: Representative Ellison moved that this bill BE CONCURRED IN and distributed copies of proposed amendments (Exhibit 3-1). He made a motion that the committee adopt the amendments. The motion carried with Representative Switzer voting no.

Representative Patterson moved to amend the bill on page 4, line 22, beginning with "the" by striking the remainder of that line through "value" on line 23. There was some discussion on this and Representative Patterson withdrew his amendment.

Representative Switzer moved to amend on page 4, lines 7 through 9 in subsection 6, by adding the language to read, "if land has been valued and assessed as agricultural land in any year, it shall continue to be so valued, assessed and taxed until the department reclassifies the property. A reclassification does not mean revaluation pursuant to 15-7-111."

Representative Ream said that he thought this bill does the opposite of what it intends to do and he sees a lot of problems with it. He informed the committee that he has 10 acres and raises sheep and chickens and he is currently paying the regular market value and not as agricultural land, but now he could qualify with this.

Representative Ellison moved to amend the bill on page 2, line 13 by striking "sales" and inserting "income". The motion carried with Representative Zabrocki and Representative Switzer voting no.

Representative Koehnke said that he has 20 acres where the farm sits and he has buildings elsewhere and this does not join the acres where the farm sits and he noted that on page 1, line 22, they had deleted "noncontiguous parcels".

Representative Iverson moved to put that language back in the bill. The motion carried unanimously.

Representative Ellison moved that the bill BE CONCURRED IN AS AMENDED. The motion carried with Representative Ream, Representative Patterson, Representative Switzer and Representative Gilbert voting no.

DISPOSTION OF SENATE BILL 400: Representative Hanson moved that this bill BE CONCURRED IN. Representative Koehnke handed out to the committee three sets of proposed amendments. See Exhibit 4. He moved adoption of these amendments.

Chairman Devlin noted that this would change the fiscal note considerably as they have added 20 cents on the whole formula.

Representative Asay indicated that they would sweeten up the bill considerably with these amendments and now there is more than they asked for originally.

Representative Harp made a substitute motion that in Set No. 1, amendments 1 and 2 DO NOT PASS. Mr. Bohyer explained that the third amendment on that page is a technical amendment and should be in there.

A vote was taken on the DO NOT PASS motion on the amendments 1 and 2 and the vote carried with 10 voting aye and 9 voting no. See Roll Call Vote.

Representative Cohen moved the third amendment on Set No. 1. The motion carried unanimously.

Representative Cohen moved that amendment #2 on Set No. 2 DO NOT PASS. The motion carried with Representative Hanson, Representative Schye, Representative Zabrocki, Representative Koehnke, Representative Sands, Representative Ellison, Representative Patterson and Representative Ream voting no for a total of 8 noes.

Representative Raney moved that they adopt the amendments on Set No. 3. The motion carried with Representative Sands voting no.

Representative Koehnke moved that the bill BE CONCURRED IN AS AMENDED. The motion carried with Representative Keenan and Representative Gilbert voting no.

DISPOSITION OF SENATE BILL 455: Representative Williams moved the adoption of the statement of intent.

Chairman Devlin asked why this was not brought in when they brought the bill in. Representative Williams replied that it was suggested by Alec Hanson. There was some discussion and Representative Williams withdrew his motion.

Representative Harp made a substitute motion to TABLE this bill. The motion failed with a vote of 9 ayes and 11 noes. See Roll Call Vote.

Representative Williams moved adoption of the amendment that was proposed by the Department of Commerce. Mr. Bohyer explained that there is more money that will go into the local government block grant account and the department wanted to make clear that this was different money than what was already going in there and consequently they needed to have subsection 5 deal with the disbursement of that account. He noted that this was changed from March 1, 1985 to May 1, 1986. The motion carried with Representative Switzer, Representative Devlin, Representative Patterson, Representative Zabrocki and Representative Ellison voting no.

Representative Sands moved to amend the bill by taking out section 5 on pages 8, 9 and 10 and to amend the title accordingly.

Representative Keenan noted that the banks are in favor of this and requested that Mr. Cadby address the issue.

John Cadby, representing the Montana Bankers' Association, stated that there was no loss of revenue to Representative Zabrocki's district and that by deleting section 5, it would eliminate the $2 million increase in revenue by allowing the 243 deduction to continue in place; and if you take those sections out, you will no longer tax intercorporate dividends from subsidiaries or the investments that a corporation can make.

Representative Keenan asked if the banks oppose this deduction.

Mr. Cadby replied that they support the bill in its entirety because it allows Montana corporations, including banks, to file a consolidated return so that their intercorporate dividends that are paid from the bank to the holding company are not taxed just as the intercorporate dividends paid in a multinational corporation are not taxed, and are taxed on a unitary basis. International or multinational corporations are allowed to file combined returns, but Montana corporations are not allowed to file consolidated returns, which are, in essence, the same thing. He explained that this equalizes the basis of taxation in a Montana corporation.

Tom Ebzery, representing Nerco Mining Company and Pacific Power and Light Company, said that they are the subsidiary they are talking about and said that this would not affect section 243, but if it were put in here and no combined returns were allowed, then the dividend deduction that goes from a subsidiary to the parent would have to be taxed and it is not taxed now.

Chairman Devlin said that if he was not mistaken, the banks in Custer and Prairie Counties are losers in this.

Mr. Cadby replied that there are 16 counties that lost in total $250,000.00, but the hold-harmless clause protects all of those counties to where they will receive not less than 90% of the revenue they were receiving.

Chairman Devlin asked if that 90% was there in the Senate. Mr. Cadby replied that was added in the Senate in committee. He said that this was only a two-year amendment, but, if they wish to make that permanent, he was sure there would be no objections to that.

Dan Bucks from the Department of Revenue said that a combined report is different from a consolidated return and, under a combined report, the intercompany dividends are washed out just like a consolidated return and this bill does not prohibit the effect of filing of a combined report that is still available to the corporations that are affected by it. He advised that a consolidated report is a more restricted report and is restricted to a case where there is an 80% ownership and is tested principally on the basis of ownership. He indicated that the combined report hinges more on the functional inter-relationship among the entities.

There was further discussion and a vote was taken on the motion to take out section 5. The motion failed with 9 voting aye and 11 voting no.

Representative Williams moved that this bill BE CONCURRED IN AS AMENDED. The motion carried with 11 voting aye and 9 voting no. See Roll Call Vote.

DISPOSITION OF SENATE BILL 72: Representative Sands moved that this bill BE CONCURRED IN. Representative Keenan moved that this bill be amended to show that it is effective this tax year - taxable year 1985. The motion carried unanimously.

Representative Harp moved that they TABLE this bill. The motion carried with Representative Switzer, Representative Raney, Representative Sands and Representative Schye voting no.

DISPOSITION OF HOUSE BILL 944: Representative Ream moved that this bill DO PASS. The motion carried with a vote of 11 ayes and 9 noes. See Roll Call Vote.

DISPOSITION OF HOUSE BILL 735: Representative Harp moved to reconsider their action on this bill. He advised that he had met with the governor today and distributed Exhibit 5 to the committee. A vote was taken on the motion and it carried with a vote of 12 ayes and 8 noes.

Representative Harp moved the amendments contained in Exhibit 5. The motion carried with a vote of 12 ayes and 8 noes. See Roll Call Vote.

Representative Harp moved that this bill DO PASS AS AMENDED. The vote was 10 to 10. See Roll Call Vote. The bill goes to the floor of the house WITHOUT RECOMMENDATION.

RECONSIDERATION OF HOUSE BILL 392: Representative Cohen made a motion to take this bill off the table. He distributed some proposed amendments to this bill. See Exhibit 6. The motion failed 6 to 14. See Roll Call Vote.

RECONSIDERATION OF SENATE BILL 280: Representative Hanson moved to reconsider their action on this bill. The motion failed with a vote of 7 to 13. See Roll Call Vote.

ADJOURNMENT: There being no further business, the meeting adjourned at 10:30 p.m.

Gerry Devlin
GERRY DEVLIN, Chairman

Alice Omang
Alice Omang, Secretary

DAILY ROLL CALL

HOUSE TAXATION COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date March 29, 1985 P.M.

NAME	PRESENT	ABSENT	EXCUSED
DEVLIN, GERRY, Chrm.	✓		
WILLIAMS, MEL, V. Chrm.	✓		
ABRAMS, HUGH	✓		
ASAY, TOM	✓		
COHEN, BEN	✓		
ELLISON, ORVAL	✓		
GILBERT, BOB	✓		
HANSON, MARIAN	✓		
HARRINGTON, DAN	✓		
HARP, JOHN	✓		
IVERSON, DENNIS	✓		
KEENAN, NANCY	✓		
KOEHNKE, FRANCIS	✓		
PATTERSON, JOHN	✓		
RANEY, BOB	✓		
REAM, BOB	✓		
SANDS, JACK	✓		
SCHYE, TED	✓		
SWITZER, DEAN	✓		
ZABROCKI, CARL	✓		

STANDING COMMITTEE REPORT

March 29, 19 85

MR. SPEAKER:

We, your committee on TAXATION

having had under consideration HOUSE Bill No. 735

first reading copy (white color)

REALLOCATES MINERAL ROYALTY PROCEEDS, RAISES FUEL TAX LOCAL GOVERNMENT APPROPRIATIONS;

Respectfully report as follows: That HOUSE Bill No. 735

be amended as follows:

1. Title, line 5.
Following: "AN ACT"
Strike: the remainder of line 5 through "PROGRAM;" on line 7

2. Title, line 9.
Following: "1985;"
Strike: the remainder of line 9 through "PROGRAM;" on line 10

3. Title, line 10.
Following: "SECTIONS"
Strike: "7-6-302,"
Following: "15-70-204"
Strike: ","
Insert: "AND"

DO PASS

(continued)

Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

(#5-6)

4. Title, line 11.
Following: "15-70-321,"
Strike: "20-9-343, AND 60-3-216,"
Following: "MCA;" on line 11
Strike: "REPEALING SECTION 17-3-201, MCA;" on lines 11 and 12

5. Page 1, line 22.
Following: "and"
Insert: ", except as provided in subsection (4),"

6. Page 2.
Following: line 7
Insert: "(4) Effective July 1, 1989, the gasoline license tax rate shall be reduced to 15 cents for each gallon of all other gasoline distributed by him within the state and upon which the gasoline license tax has not been paid by any other distributor."

7. Page 2.
Following: line 9
Insert: "(1)"

8. Page 2.
Following: line 25
Insert: "(2) Effective July 1, 1989, the tax on diesel fuel and volatile liquids shall be reduced to 17 cents for each gallon of diesel fuel or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I."

9. Pages 3 through 6.
Strike: Sections 3 through 7 in their entirety

10. Page 6.
Following: line 10
Insert: "NEW SECTION. Section 3. All funds deposited in the highway special revenue account in the state special revenue fund shall be used exclusively for highway program purposes, except those funds appropriated for non-highway program current level operations only."
Renumber: subsequent section

AND AS AMENDED
~~AMENDED~~
WITHOUT RECOMMENDATION

March 29, 19 85

GERRY DEVLIN, Chairman.

STATE PUB. CO.
Helena, Mont.

ROLL CALL VOTE

HOUSE COMMITTEE TAXATION

DATE 3-29-1985 BILL NO. H.B# 735 TIME p.m.

NAME	AYE	NAY
DEVLIN, GERRY, Chrm.		✓
WILLIAMS, MEL, V.Chrm.	✓	
ABRAMS, HUGH	✓	
ASAY, TOM		✓
COHEN, BEN	✓	
ELLISON, ORVAL		✓
GILBERT, BOB		✓
HANSON, MARIAN	✓	
HARRINGTON, DAN	✓	
HARP, JOHN	✓	
IVERSON, DENNIS		✓
KEENAN, NANCY	✓	
KOEHNKE, FRANCIS	✓	
PATTERSON, JOHN		✓
RANEY, BOB	✓	
REAM, BOB	✓	
SANDS, JACK		✓
SCHYE, TED	✓	
SWITZER, DEAN		✓
ZABROCKI, CARL	✓	

Secretary Alice Omang

Chairman Gerry Devlin

Motion: To reconsider H.B. # 735

ROLL CALL VOTE

HOUSE COMMITTEE TAXATION

DATE 3-29-1985 BILL NO. HB. # 735 TIME p.m

NAME	AYE	NAY
DEVLIN, GERRY, Chrm.	✓	
WILLIAMS, MEL, V.Chrm.	✓	
ABRAMS, HUGH	✓	
ASAY, TOM		✓
COHEN, BEN	✓	
ELLISON, ORVAL		✓
GILBERT, BOB		✓
HANSON, MARIAN	✓	
HARRINGTON, DAN	✓	
HARP, JOHN	✓	
IVERSON, DENNIS		✓
KEENAN, NANCY	✓	
KOEHNKE, FRANCIS		✓
PATTERSON, JOHN		✓
RANEY, BOB	✓	
REAM, BOB	✓	
SANDS, JACK		✓
SCHYE, TED	✓	
SWITZER, DEAN		✓
ZABROCKI, CARL	✓	

Secretary Alice Omang

Chairman Gerry Devlin

Motion: To adopt Representative Harris amendments to H.B. # 735

ROLL CALL VOTE

HOUSE COMMITTEE TAXATION

DATE 3-29-85 BILL NO. H.B. #735 TIME p.m

NAME	AYE	NAY
DEVLIN, GERRY, Chrm.		✓
WILLIAMS, MEL, V.Chrm.	✓	
ABRAMS, HUGH	✓	
ASAY, TOM		✓
COHEN, BEN	✓	
ELLISON, ORVAL		✓
GILBERT, BOB		✓
HANSON, MARIAN	✓	
HARRINGTON, DAN	✓	
HARP, JOHN	✓	
IVERSON, DENNIS		✓
KEENAN, NANCY	✓	
KOEHNKE, FRANCIS		✓
PATTERSON, JOHN		✓
RANEY, BOB	✓	
REAM, BOB	✓	
SANDS, JACK		✓
SCHYE, TED	✓	
SWITZER, DEAN		✓
ZABROCKI, CARL		✓

Secretary Alice Omang

Chairman Gerry Devlin

Motion: Do Pass As Amended -- H.B. #735

STANDING COMMITTEE REPORT

March 29, 19 85

MR. SPEAKER:

We, your committee on TAXATION

having had under consideration HOUSE Bill No. 826

first reading copy (white color)

AN ACT ALLOWING A DEFINED RESORT COMMUNITY TO ESTABLISH A RESORT TAX AFTER A VOTE OF ITS ELECTORS;

Respectfully report as follows: That HOUSE Bill No. 826

Be amended as follows:

1. Page 2, line 17.
Following: "than"
Strike: "10,000"
Insert: "1,500"

AND AS AMENDED

DO PASS

GERRY DEVLIN, Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

#56

STANDING COMMITTEE REPORT

March 29, 19 35

MR. SPEAKER:

We, your committee on TAXATION

having had under consideration HOUSE Bill No. 244

first reading copy (white color)

AN ACT TO EXCLUDE FROM DEDUCTIONS ALLOWED IN COMPUTING INDIVIDUAL INCOME TAX THE AMOUNT OF FEDERAL INCOME TAX PAID WITHIN THE TAXABLE YEAR IN EXCESS OF $6000;

Respectfully report as follows: That HOUSE Bill No. 244

DO PASS

GERRY DEVLIN, Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

ROLL CALL VOTE

HOUSE COMMITTEE TAXATION

DATE 3-29-1985 BILL NO. H.B. #944 TIME

NAME	AYE	NAY
DEVLIN, GERRY, Chrm.		✓
WILLIAMS, MEL, V.Chrm.	✓	
ABRAMS, HUGH	✓	
ASAY, TOM		✓
COHEN, BEN	✓	
ELLISON, ORVAL		✓
GILBERT, BOB		✓
HANSON, MARIAN		✓
HARRINGTON, DAN	✓	
HARP, JOHN	✓	
IVERSON, DENNIS		✓
KEENAN, NANCY	✓	
KOEHNKE, FRANCIS	✓	
PATTERSON, JOHN		✓
RANEY, BOB	✓	
REAM, BOB	✓	
SANDS, JACK		✓
SCHYE, TED	✓	
SWITZER, DEAN		✓
ZABROCKI, CARL	✓	

Secretary Alice Omang

Chairman Gerry Devlin

Motion: Do Pass -- HB. #944

CS-31

STANDING COMMITTEE REPORT

March 29, 19 85

MR. SPEAKER:

We, your committee on TAXATION

having had under consideration SENATE Bill No. 400

third reading copy (blue color)

EXTENDING THE ALCOHOL TAX INCENTIVE TO EXPORTS; LIMITING INCENTIVE PAYMENTS;

Respectfully report as follows: That SENATE Bill No. 400

be amended as follows:

1. Page 3, line 17.
Following: "EXCEED"
Strike: "$1,300,000"
Insert: "$1,000,000"

2. Page 8, line 24.
Following: "PAYMENT OF"
Strike: "$1,300,000"
Insert: "$1,000,000"

3. Page 9, line 13.
Following: "alcohol"
Strike: "sold"
Insert: "blended"

AND AS AMENDED
BE CONCURRED IN

DO PASS

GERRY DEVLIN. Chairman.

COMMITTEE SECRETARY

STATE PUB. CO.
Helena, Mont.

ROLL CALL VOTE

HOUSE COMMITTEE TAXATION

DATE 3-29-1985 BILL NO. SB #400 TIME 7 p.m.

NAME	AYE	NAY
DEVLIN, GERRY, Chrm.	✓	
WILLIAMS, MEL, V.Chrm.	✓	
ABRAMS, HUGH		✓
ASAY, TOM	✓	
COHEN, BEN	✓	
ELLISON, ORVAL		✓
GILBERT, BOB	✓	
HANSON, MARIAN		✓
HARRINGTON, DAN		
HARP, JOHN	✓	
IVERSON, DENNIS	✓	
KEENAN, NANCY	✓	
KOEHNKE, FRANCIS		✓
PATTERSON, JOHN		✓
RANEY, BOB	✓	
REAM, BOB		✓
SANDS, JACK		✓
SCHYE, TED		✓
SWITZER, DEAN	✓	
ZABROCKI, CARL		✓

Secretary Alice Omang

Chairman Gerry Devlin

Motion: Do Not Pass Motion on Amendments 1 & 2 Set 1- Representative Harp SB #400

STANDING COMMITTEE REPORT

March 29, 1985

MR. SPEAKER:

We, your committee on TAXATION

having had under consideration SENATE Bill No. 431

third reading copy (blue color)

AN ACT REVISING THE GREENBELT APPRAISAL DEFINITION OF AGRICULTURAL LAND FOR REAL PROPERTY TAXATION PURPOSES; CLASSIFYING SEPARATELY RESIDENCES SITUATED ON AGRICULTURAL LAND AND TAXING THEM AT 80 PERCENT OF THE TAXABLE PERCENTAGE APPLICABLE TO CLASS FOUR PROPERTY;

Respectfully report as follows: That SENATE Bill No. 431

be amended as follows:

1. Page 1, line 22.
Following: "use"
Insert: "or noncontiguous parcels of land under one ownership that are actively devoted to agricultural use"

2. Page 2, line 13.
Following: "income"
Strike: "SALES"
Insert: "income"

3. Page 3.
Following: line 4
Strike: lines 5 and 6 in their entirety
Renumber: subsequent subsection

DO PASS

(continued)

Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

March 29 19 85

4. Page 4, line 7.
Following: "(6)"
Strike: "BEFORE"
Insert: "IF"
Following: "LAND"
Strike: "MAY BE"
Insert: "has been"

5. Page 4, lines 8 and 9.
Following: "YEAR," on line 8
Strike: the remainder of line 8 and line 9 in its entirety
Insert: "it shall continue to be so valued, assessed, and taxed until the department reclassifies the property. A reclassification does not mean revaluation pursuant to 15-7-111."

6. Page 5, line 15.
Following: "SUBSECTION"
Strike: "(C)"
Insert: "(b)"

7. Page 5, line 16.
Strike: "(D)"
Insert: "(c)"
Following: "OVER"
Strike: "5"
Insert: "15"
Following: "ACRES"
Insert: "under one ownership"

8. Page 5, line 17.
Following: "IS"
Strike: "USED FOR GROWING TIMBER"
Insert: "capable of producing timber of commercial quality that can be economically harvested in commercial quantity"

AND AS AMENDED
BE CONCURRED IN

GERRY DEVLIN, Chairman.

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

March 29, 19 85

MR. SPEAKER:

We, your committee on TAXATION

having had under consideration SENATE Bill No. 455

third reading copy (blue color)

REVISING THE CORPORATION TAX _ CONCERNING NET INCOME & CONSOLIDATED RETURNS;

Respectfully report as follows: That SENATE Bill No. 455

be amended as follows:

1. Title, line 25.
Following: "7-6-304,"
Insert: "7-6-309,"

2. Page 5, lines 4 and 5.
Following: "subsection" on line 4
Strike: "prior to funding the general services block grants"
Insert: "independent of the funding of any other block grant"

~~DO PASS~~

(continued)

Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

March 29, 19 85

3. Page 6.
Following: line 10
Insert: "Section 4. Section 7-6-309, MCA, is amended to read:

"7-6-309. Disposition and use of funds. Disbursements from the local government block grant account shall be made as follows:

(1) On October 1, 1993, a disbursement must be made from the general services block grant that is the lesser of:

(a) $2 million; or

(b) one-third of the total general fund appropriation to the account for the biennium ending June 30, 1985.

(2) On March 1, 1984, and March 1 of each succeeding year the reimbursement required by 61-3-536 must be distributed.

(3) On June 30, 1984, a disbursement must be made from the general services block grants for municipalities and counties that equals the amount which is the lesser of the difference between the account balance on that date and:

(a) $3 million; or

(b) one-half of the total general fund appropriation to the account for the biennium ending June 30, 1985.

(4) On Except as provided in subsection (5), on June 30, 1985, and June 30 of each succeeding year, all funds remaining in the account must be distributed.

(5) On May 1, 1986, and May 1 of each succeeding year, the portion of the local government block grant account consisting of 8.569 of the corporate license and income tax must be distributed.

~~(5)~~ (6) The funds distributed by this part may be used for any purpose authorized by law." "

AND AS AMENDED
BE CONCURRED IN

GERRY DEVLIN, Chairman.

STATE PUB. CO.
Helena, Mont.

ROLL CALL VOTE

HOUSE COMMITTEE TAXATION

DATE 3-29-1985 BILL NO. S.B# 455 TIME p.m.

NAME	AYE	NAY
DEVLIN, GERRY, Chrm.		✓
WILLIAMS, MEL, V.Chrm.	✓	
ABRAMS, HUGH	✓	
ASAY, TOM		✓
COHEN, BEN	✓	
ELLISON, ORVAL		✓
GILBERT, BOB	✓	
HANSON, MARIAN		✓
HARRINGTON, DAN	✓	
HARP, JOHN		✓
IVERSON, DENNIS		✓
KEENAN, NANCY	✓	
KOEHNKE, FRANCIS	✓	
PATTERSON, JOHN		✓
RANEY, BOB	✓	
REAM, BOB	✓	
SANDS, JACK		✓
SCHYE, TED	✓	
SWITZER, DEAN		✓
ZABROCKI, CARL	✓	

Secretary Alice Omang

Chairman Gerry Devlin

Motion: Be Concurred In As Amended -- S.B. # 455

ROLL CALL VOTE

HOUSE COMMITTEE TAXATION

DATE 3-29-1985 BILL NO. SB#455 TIME p.m

NAME	AYE	NAY
DEVLIN, GERRY, Chrm.	✓	
WILLIAMS, MEL, V.Chrm.		✓
ABRAMS, HUGH	✓	
ASAY, TOM	✓	
COHEN, BEN		✓
ELLISON, ORVAL		✓
GILBERT, BOB		✓
HANSON, MARIAN	✓	
HARRINGTON, DAN		✓
HARP, JOHN	✓	
IVERSON, DENNIS	✓	
KEENAN, NANCY		✓
KOEHNKE, FRANCIS		✓
PATTERSON, JOHN	✓	
RANEY, BOB		✓
REAM, BOB		✓
SANDS, JACK	✓	
SCHYE, TED		✓
SWITZER, DEAN	✓	
ZABROCKI, CARL		✓

Secretary Alice Omang

Chairman Gerry Devlin

Motion: Representative Sands motion to adopt the amendments to Senate Bill #455

CS-31

ROLL CALL VOTE

HOUSE COMMITTEE TAXATION

DATE 3-29-1985 BILL NO. SB 455 TIME p.m

NAME	AYE	NAY
DEVLIN, GERRY, Chrm.	✓	
WILLIAMS, MEL, V.Chrm.		✓
ABRAMS, HUGH		✓
ASAY, TOM	✓	
COHEN, BEN		✓
ELLISON, ORVAL	✓	
GILBERT, BOB		✓
HANSON, MARIAN	✓	
HARRINGTON, DAN		✓
HARP, JOHN	✓	
IVERSON, DENNIS		✓
KEENAN, NANCY		✓
KOEHNKE, FRANCIS		✓
PATTERSON, JOHN	✓	
RANEY, BOB		✓
REAM, BOB		✓
SANDS, JACK	✓	
SCHYE, TED		✓
SWITZER, DEAN	✓	
ZABROCKI, CARL	✓	

Secretary Alice Omang

Chairman Gerry Devlin

Motion: To Table SB #455

CS-31

ROLL CALL VOTE

HOUSE COMMITTEE TAXATION

DATE 3-29-1985 BILL NO. S.B# 280 TIME p.m

NAME	AYE	NAY
DEVLIN, GERRY, Chrm.		✓
WILLIAMS, MEL, V.Chrm.	✓	
ABRAMS, HUGH		✓
ASAY, TOM		✓
COHEN, BEN		✓
ELLISON, ORVAL		✓
GILBERT, BOB		✓
HANSON, MARIAN	✓	
HARRINGTON, DAN	✓	
HARP, JOHN		✓
IVERSON, DENNIS	✓	
KEENAN, NANCY		✓
KOEHNKE, FRANCIS		✓
PATTERSON, JOHN		✓
RANEY, BOB	✓	
REAM, BOB	✓	
SANDS, JACK		✓
SCHYE, TED		✓
SWITZER, DEAN		✓
ZABROCKI, CARL	✓	

Secretary Alice Omang

Chairman Gerry Devlin

Motion: To reconsider tabled motion ("take off table)

ROLL CALL VOTE

HOUSE COMMITTEE TAXATION

DATE 3-29-1985 BILL NO. H.B#392 TIME p.m.

NAME	AYE	NAY
DEVLIN, GERRY, Chrm.		✓
WILLIAMS, MEL, V.Chrm.	✓	
ABRAMS, HUGH		✓
ASAY, TOM		✓
COHEN, BEN	✓	
ELLISON, ORVAL		✓
GILBERT, BOB		✓
HANSON, MARIAN		✓
HARRINGTON, DAN	✓	
HARP, JOHN		✓
IVERSON, DENNIS		✓
KEENAN, NANCY	✓	
KOEHNKE, FRANCIS		✓
PATTERSON, JOHN		✓
RANEY, BOB		✓
REAM, BOB	✓	
SANDS, JACK		✓
SCHYE, TED	✓	
SWITZER, DEAN		✓
ZABROCKI, CARL		✓

Secretary Alice Omang

Chairman Gerry Devlin

Motion: To reconsider the Tabled motion. ("Take off table") HB#392

CS-31

Exhibit 1
HB 826
3/29/85
Dunbar, Cal

TOWN OF WEST YELLOWSTONE

Box 579
WEST YELLOWSTONE, MONTANA 59758
Telephone 406 646-7795

December 12, 1984

Governor's Economic Development Summit
and Small Business Conference
Sheraton Hotel
Great Falls, Montana

"Tailor Made Local Option Taxation"

The 1985 Legislature needs to address directly our current need throughout the State for local option taxation, that is, local taxation by consent of the community through referendum.

This need for enabling legislation to permit local option taxation of any constitutional type at the discretion of the individual community is crucial. The forthcoming Legislature should address this need now. It is long overdue.

Admittedly, the anticipated bed tax bills from the Montana League of Cities and Towns for either statewide or local option taxation are long overdue and worthy of support.

However, West Yellowstone believes the true answer to the ever deepening fiscal problems of Montana's municipalities require broad local option taxation powers. Current tax formulas, do not suffice. Special interest taxation bills do not address the basic issues of taxation formulas.

We have addressed local option taxation issues with this Council last July, with the City Council of Billings in September, and our coverage in the media has shown us there is real grass-roots interest among our municipalities.

(1)

Briefly, here is West Yellowstone's experience with current taxation formulas which just do not do the job for us:

West Yellowstone originated in 1907, incorporated in 1966 and chartered in 1980.
Year round population: 760 in Town, 1100 in Hebgen Lake Basin.
Seasonal population June - September: 1,300 with nightly tourist transients: 5,000 additional.
West Entrance to Yellowstone National Park: 800,000/yr plus "cross-back traffic"
Estimated commerce for West Yellowstone is $14 Million dollars/year.

However, all is not well.

"Tourism West Yellowstone and Its Effect on Ability of the Town to Deliver Municipal Services" Harry W. Conard, Jr. December 1979. Funded by $15,000.00 grant, Old West Regional Commission. Study shows:

West Yellowstone costs are 5X to 6X higher than other five Montana Towns of comparable size: Belt (683), Bridger (768), Manhattan (934), Twin Bridges (685), Valier (676).
West Yellowstone spent 105% more than locally generated funds in 1978.

Therefore, West Yellowstone chartered, to follow study recommendations. Wrote HB 109 "Resort Tax" bill. Denied by House Tax Committee, March 1981 by 18/1 vote.

West Yellowstone Council passed Occupancy Fee Ordinance #90, (Bed Tax #1) January 1982, @ 25¢ per head per night. Collected $64,000.00 June 1982-February 1983. Montana Innkeepers suit. Tax is illegal because had no referendum. Referendum May 31, 1983-passed 155/56.

Ordinance #98 (Bed Tax #2) Occupancy Fee reinstated @25¢ per head in motels and 50¢ per vehicle in campgrounds. Collected $33,000.00 June 1983-September 1983. State Supreme Court vioded Billings bed tax, our collections ended.

Right now, West Yellowstone government services costs continue at 5 to 6 times greater than Towns of our permanent population in Montana.

1983-1984 Budget: Total $313,524.00 ($100,163.00 @75 mills 34%) Police Dept @46% ($145,695.00) Street Dept. @ 16% ($51,622.00) Total funds allocated per person per night: January (760) $1.15 July (6,300) 14¢.

Not only does West Yellowstone suffer under current taxation formulas, but other cities as well. Examine study of Bozeman, Montana vs Laramie, Wyoming. Short Changed in Bozeman : A Look at Revenue, CE 454, Transportation Planning,MSU, Fall Quarter, April 1984. Laramie has total revenue 2.26 times greater than

Bozeman. Bozeman is forced to property taxes nearly four times greater than Laramie. The difference in the two municipal tax structures is the revenue from severance and sales tax sources. West Yellowstone case follows Bozeman's pattern. How about your Town?

Therefore, present Montana taxation formulas are not helping us. Formulas based on population or length of streets do not allow for our cost impaction by tourists or other factors. The formulas for beer tax, liquor tax, gasoline tax and even the State Block Grant program do not face up to the situation for us. In fact, we have to sell 300 gallons of gasloine to get back one dollar, while the average for the five towns in Conard's study is only 117 gallons. (We receive twice as much under the tax increase enacted after Conard's study, but the discrepancy remains the same). Federal Revenue Sharing was $19,600.00 (7%). PILT funds for Gallatin County were $449,832.00 with 0% to West Yellowstone.

West Yellowstone's experience with grants has been equally unrewarding.

Our previous grants have been denied. In March 1975, our HUD grant for water mains was denied with a 94 out of 96 rating, using the 1970 census poverty and substandard housing levels as criteria. We were advised not to resubmit our application.

In 1984, we have been denied first a $20,000.00 planning grant for domestic water, street, and storm drain improvement. We have been denied also a Community Development Block Grant for $454,000.00 for our water, street, storm drain overhaul. We had intended to use our $64,000.00 from our Bed Tax #1 for matching funds. So, grants are not the answer either. Grants cannot be budgeted either as they are unpredictable. We have present urgent need for major street repairs and extensive storm drainage systems and down the road we can see central water and sewer facility expansions - all well beyond our ability to fund by present formulas.

Due to the high seasonality of our tourist industry here, with only 100 days of true economic activity, proposed SIDs against real property units become astronomical when evaluated into payout amortizations. Real property revenue generation, again, is already overburdened. A look at the pie charts in the appendix shows that West Yellowstone is not unique among its Montana sibling communities in this respect. We all must look elsewhere for revenue.

Therefore, West Yellowstone believes that the 1985 Legislature should grant enabling legislation for local option taxation to municipalities to permit "Tailor-made" local option taxation. The type of taxation to be determined at the local level by referendum with property tax relief and voter review built into the enabling legislation. What can be more democratic and basically American? The people vote to suit their local needs.

West Yellowstone supports the Montana League options, particularly the Local Option Hotel/Motel Tax, Resolution #1985-4. Resolution #1985-4 (local bed tax) would bring West Yellowstone $250,000.00 per year versus $156,628.00 under #1985-2 (see table).

Conard's study calculated $140,000.00/year at 1% retail sales tax; so, 2% would generate $280,000.00.

Obviously, local governments give up a lot on the proposed bed taxes against a local retail sales tax.

What do we want the 1985 Legislature to do?

1. We want comprehensive enabling legislation to permit local option taxation of a broad scope, with referendum and voter review.

2. We mean local option taxation could be on retail sales, on beds, on wheels, on income, on whatever the voters approve locally for their municipal needs. The burden the municipality is receiving by impact should have the corresponding relief by means of off setting local revenue generations. The Urban Coalition at their November meeting at Helena supported this position. There is grass roots support, regardless of the size of the municipality.

3. West Yellowstone would much prefer to see cooperation on a comprehensive local option taxation enabling act rather than to reactivate a defensive, parochial, restricted special interest "resort tax" again. Special interest legislation does not address the real issue here: Communities with problems should have the ability to deal with them effectively.

"Tailor-made Local Option Taxation is the answer for 1985."

Thank you.

CALCULATION TABLE

Conard's Retail Sales Tax: (pg. 12, Phase II of his study) :

West Yellowstone business volume: $14 Million/year
$14,000,000 x 2% = $280,000.00/year
Each 1% = $140,000.00/year in revenue
5% = $700,000.00/year

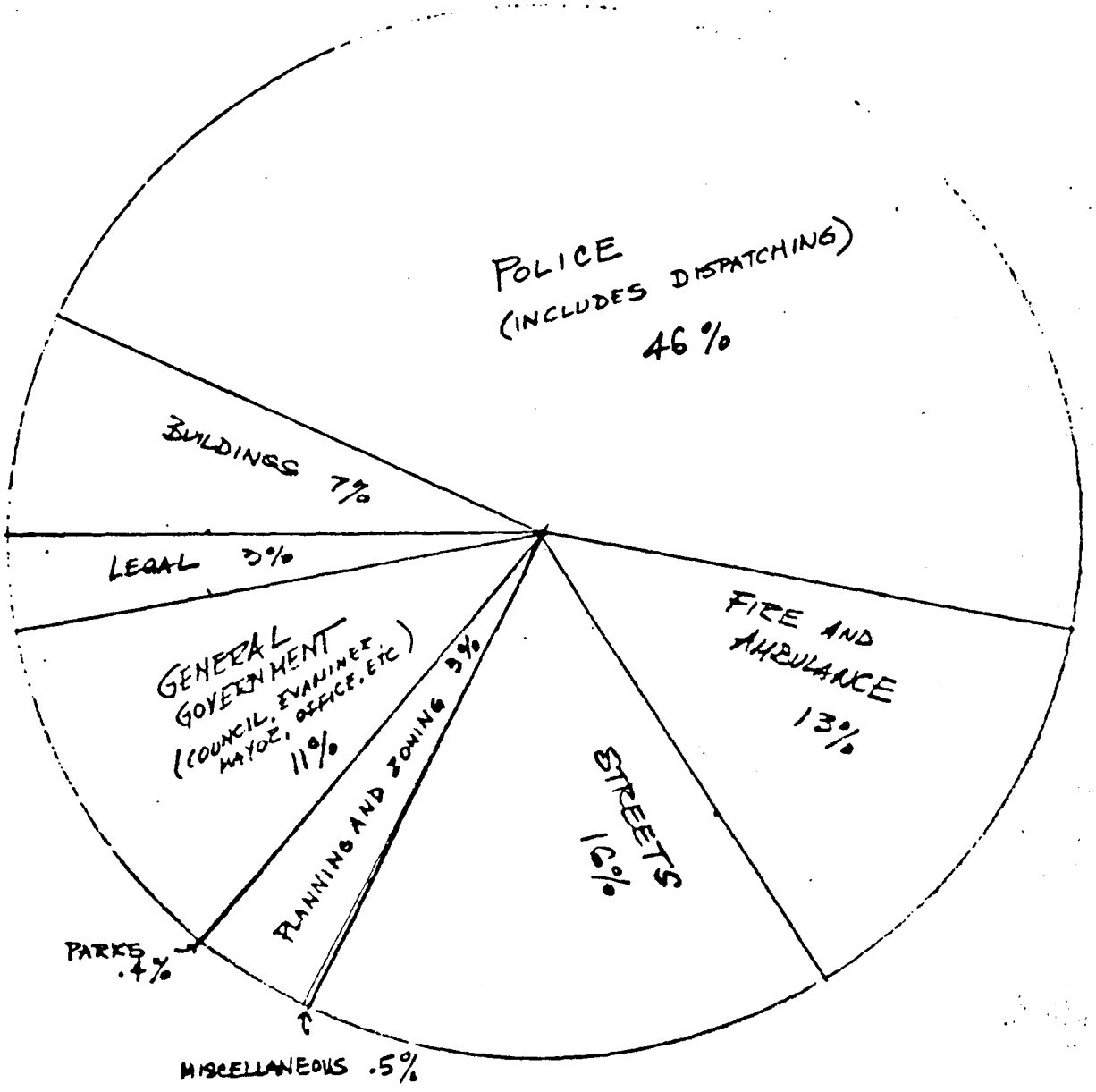
Montana League of Cities & Towns, Resolution #1985-4 : State-wide

2,000 (rooms)	x 62 (days)	x.95 (occupancy rate)	=	117,800 (units)
2,000	x 60	x.50	=	60,000
2,000	x 243	x.05	=	24,300
				202,100 (units)
200 (hookups)	x 62	x .95	=	11,780
200	x 60	x .50	=	6,000
200	x 243	x .05	=	2,430
				20,210 (units)
($30.00/room)				
202,100 x $3.00 (10%)			=	606,300.
($10.00/hookup)				
20,210 x $1.00 (10%)			=	20,210
				626,510
626,510 x .5 (5%)			=	313,255
313,255.x .50 (local Town rate)			=	156,628
West Yellowstone share				156,628

Montana League of Cities & Towns Resolution #1985-2: Local Option

(5%)	$313,255	less $62,651 (20%)	= 250,604/year
(10%)	$626,510	less $125,302 (20%)	= 502,208/year

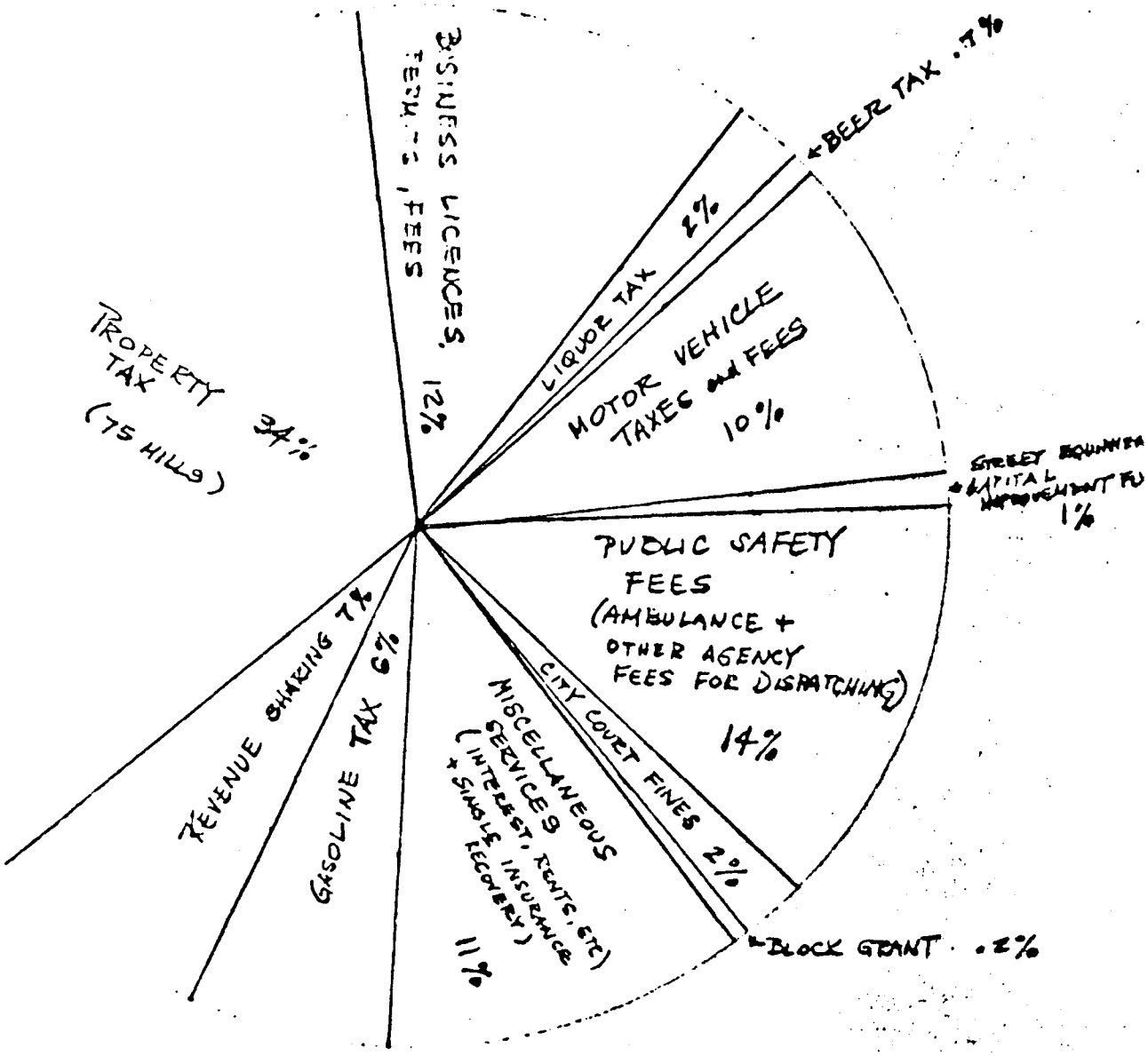
WEST YELLOWSTONE EXPENDITURES 1983-1984 FISCAL YEAR



EXPENDITURES

General Covernment	$ 34,625.54
Town Council	
Elections	
State Examiner	
Mayor	
Court	
Town Offices	
Water	
Legal	3,597.15
Buildings	21,353.99
Police	145,695.25
Fire/Ambulance	39,838.62
Street	51,622.12
Parks	1,343.15
Planning & Zoning	8,770.48
Miscellaneous	1,667.74
	$313,524.04

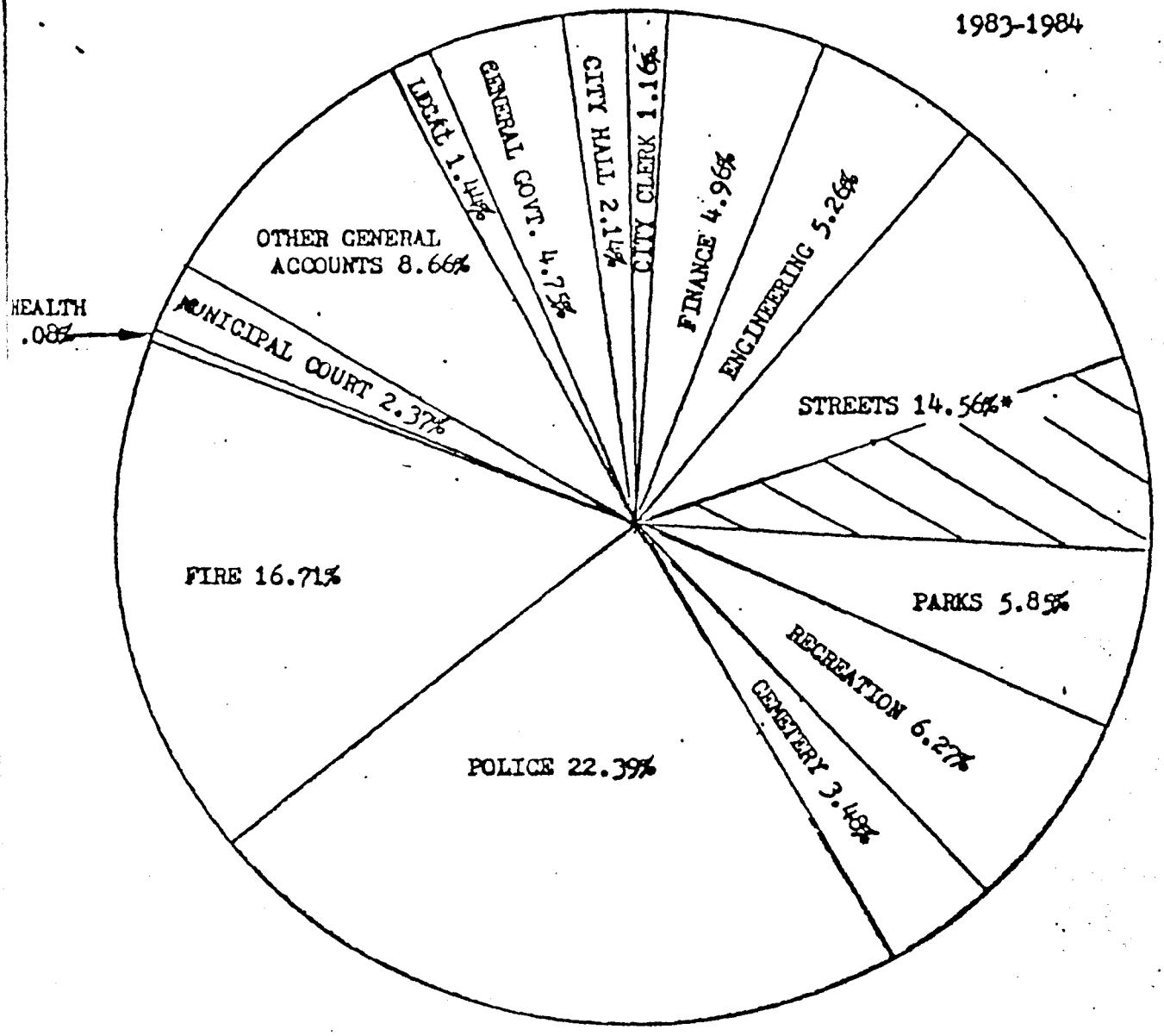
WEST YELLOWSTONE REVENUE



REVENUE

Ceneral Property Tax (75 mils) (Taxable 1,504,771)	$100,162.71
Business Licenses, Permits, Fees	35,942.51
Liquor Tax	7,165.38
Beer Tax	2,023.54
Motor Vehicle Taxes & Fees	29,360.28
Public Safety Fees	42,436.80
Dispatch Fees	
Ambulance Fees	
Court Fines & Forfeits	4,325.00
Block Crant	658.79
Miscellaneous Services	31,035.58
Interest	
Rents	
Insurance Recoveries	
Cas Tax	18,223.00
Revenue Sharing	19,647.09
Capital Improvement (Street Equipment)	4,243.16
	$296,524.33

GENERAL FUND EXPENDITURES



* The cross-hatched area represents the $ 200,000 gas tax allotment.

Figure 7. Bozeman.

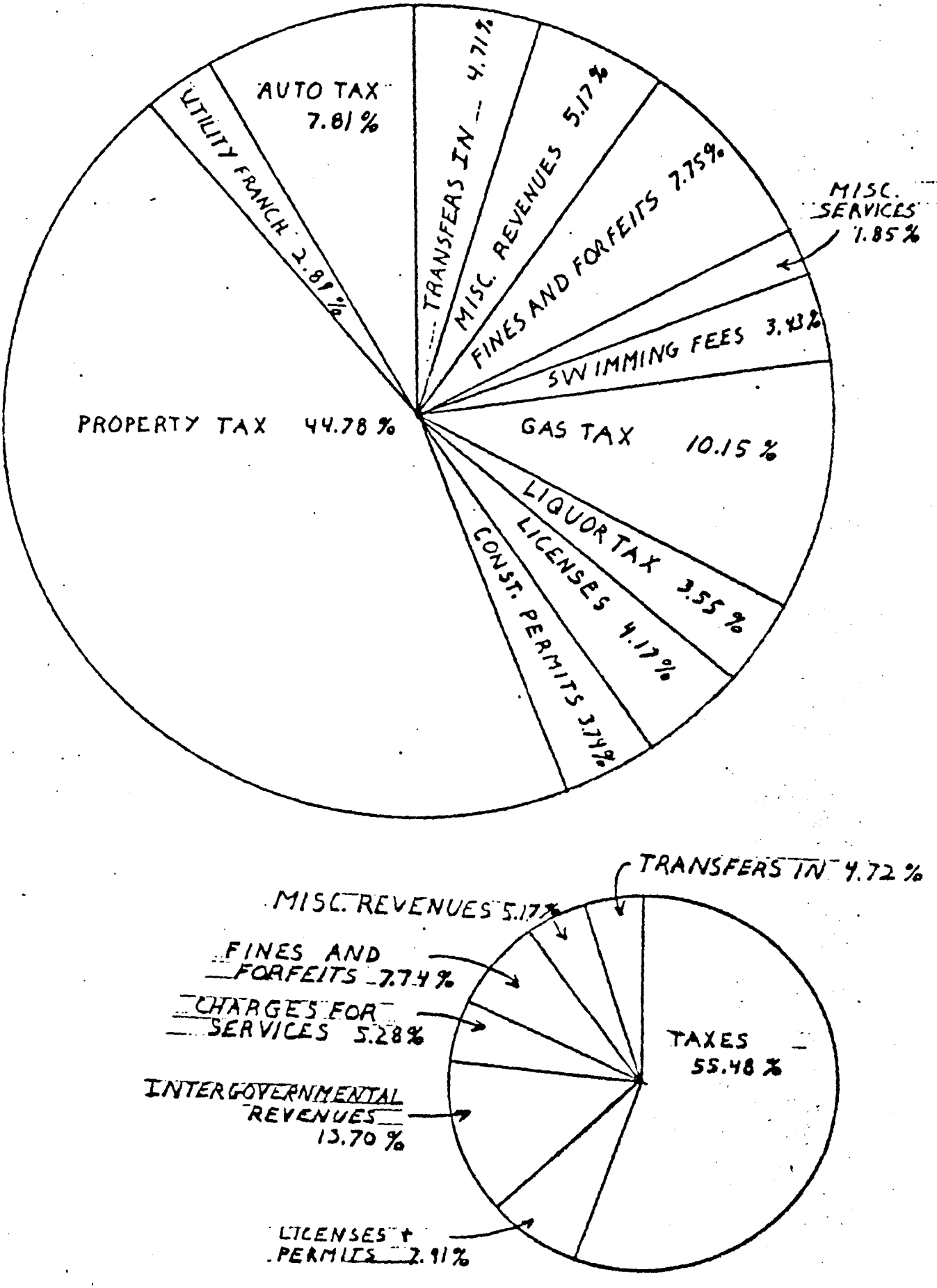
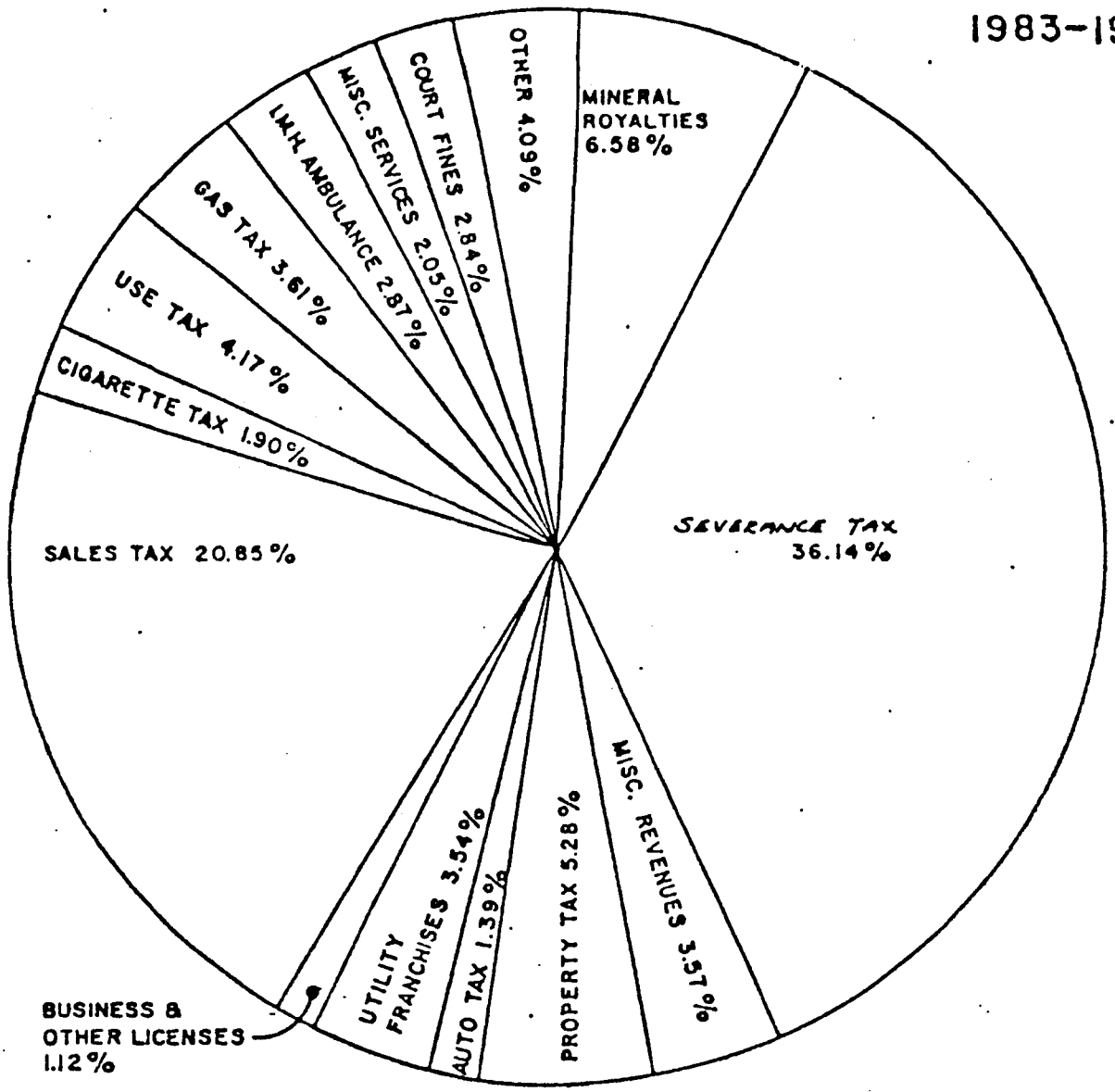

AUTO TAX 7.81%
TRANSFERS IN 4.71%
MISC. REVENUES 5.17%
FINES AND FORFEITS 7.75%
MISC. SERVICES 1.85%
UTILITY FRANCH 2.81%
SWIMMING FEES 3.43%
PROPERTY TAX 44.78%
GAS TAX 10.15%
LIQUOR TAX 3.55%
LICENSES 4.17%
CONST. PERMITS 3.74%
TRANSFERS IN 4.72%
MISC. REVENUES 5.17%
FINES AND FORFEITS 7.74%
CHARGES FOR SERVICES 5.28%
TAXES 55.48%
INTERGOVERNMENTAL REVENUES 13.70%
LICENSES + PERMITS 2.91%

Figure 5.



OTHER

-WEED & PEST	.13%
L.I.D. REVOLVING FUNDS INTEREST	.06%
WATER SERVICE CHARGE	.41%
PERPETUAL CARE & TRUST	.62%
CONSTRUCTION PERMITS	.97%
RURAL FIRE PROTECTION	.97%

CATEGORY

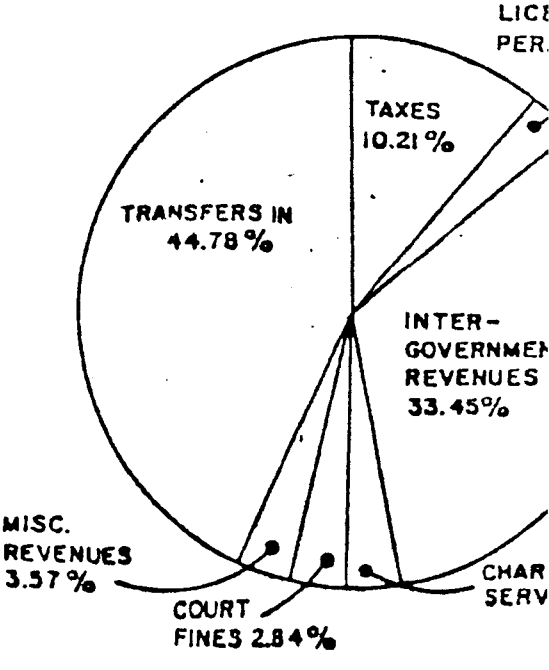
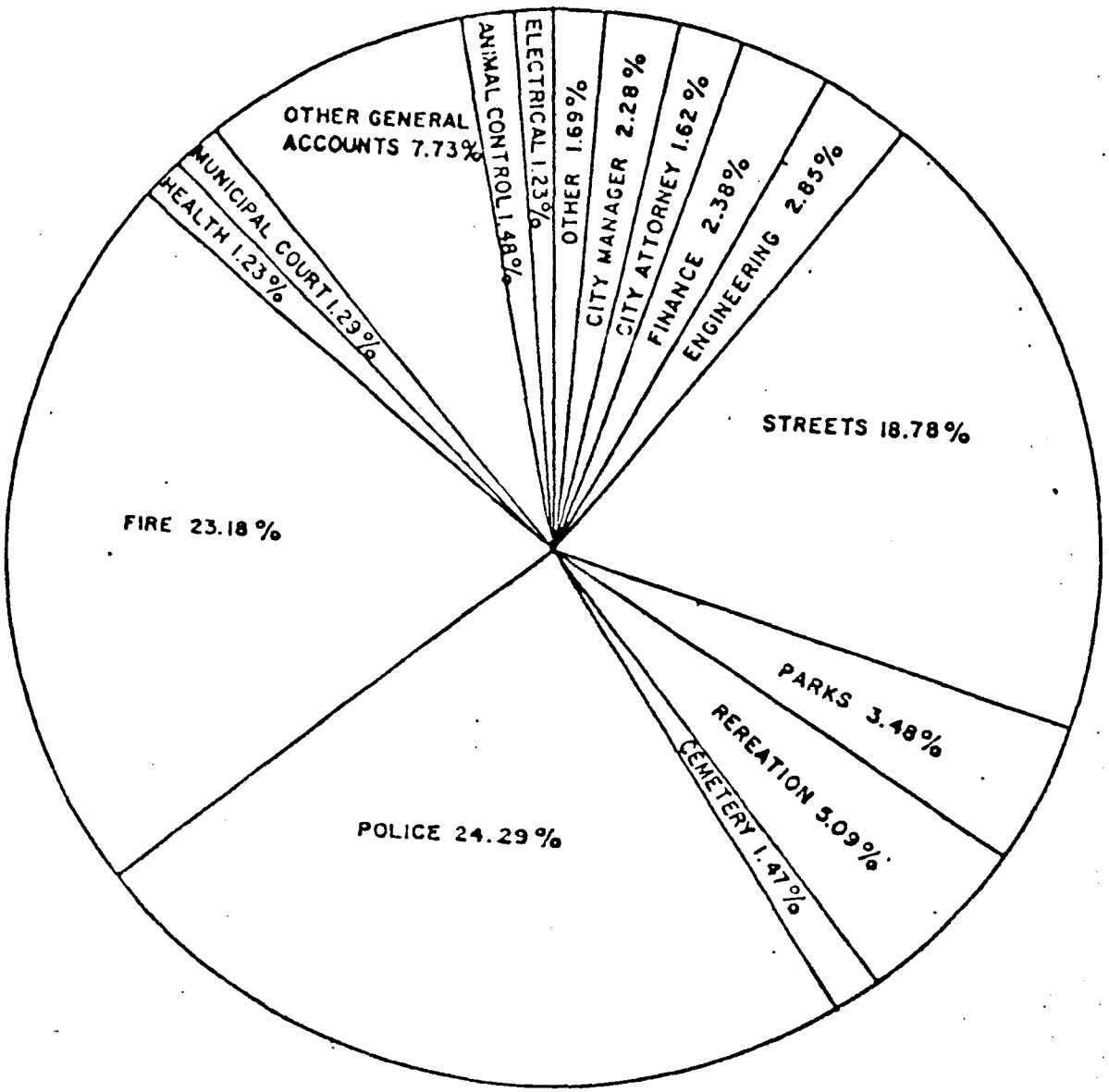


Figure 6 - Revenues - Laramie.

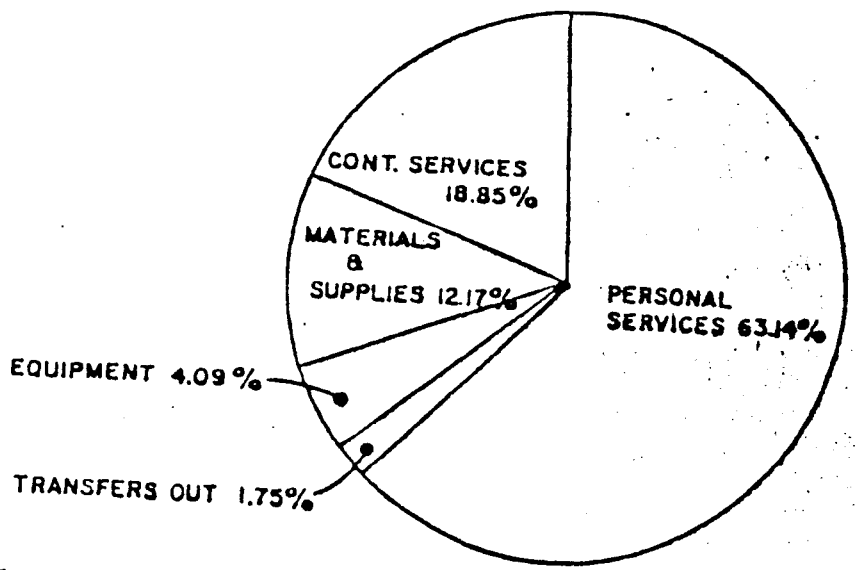
1983-1984



OTHER

CITY HALL	.40%
MOSQUITO CONTROL	.44%
CITY CLERK	.85%

CATEGORY



gure 8. General Fund Expenditures of Laramie.

Exhibit 2
HB 948
3/29/85-P.M.
Geo. Bennett

TESTIMONY OF GEORGE T. BENNETT

COUNSEL FOR MONTANA BANKERS ASSOCIATION

IN OPPOSITION TO HOUSE BILL 948

INTRODUCTION:

House Bill 948 imposes a special "franchise tax" upon "financial institutions" which adds to the standard corporation license tax rate (presently 6.75%) an additional tax if the financial institution is paying less than the average "personal property tax" paid by non-financial institution corporations. The apparent theory behind the bill is that financial institutions are not paying their fair share of personal property taxes and therefore should pay an increased rate of corporation license tax.

BILL WOULD IMPOSE DISCRIMINATORY TAX AGAINST ONLY FINANCIAL INSTITUTIONS:

As this Committee knows, the federal and state constitutions provide basic protection in the area of taxation against discrimination or unduly burdensome taxation under the commerce clause, due process clause, equal protection clause and, in addition, the Montana Constitution requires the taxes be levied by general laws for public purposes, Article VIII, Section 1, and special legislation is prohibited, Article V, Section 12 of the Montana Constitution. This bill contains no legislative findings to support singling out financial institutions for a special and higher tax.

As a matter of legislative tax policy it would be grossly discriminating to impose a higher income tax upon certain taxpayers

based upon the fact that they may pay less than the "average" paid by other taxpayers under a different type of tax. Each type of tax is aimed at taxing proportionately those subjects covered thereby. For example, corporations engaged in motor transportation will obviously pay much larger motor vehicle and fuel taxes than corporations engaged in businesses which do not use motor vehicles. This is the nature of a particular tax. Under a sales tax, if a woman purchased an expensive fur coat she would pay more sales tax than a woman who bought the less expensive cloth coat. Should that be the occasion for imposing a high income tax upon the woman who buys the less expensive coat and pays less sales tax? The whole theory behind the bill is spurious. Income taxes upon all business corporations fall fairly if income is measured for all corporations in the same manner. A property tax on the other hand should be based upon the amount of property which the taxpayer has, since the theory is that the amount of property owned is the measure of the amount of government services received and of ability to pay under a property tax.

DISCRIMINATION PROHIBITED BY FEDERAL LAW WITH RESPECT TO UNITED STATES OBLIGATIONS:

There is an additional prohibition with the discrimination proposed by this bill which would deeply affect any taxation of financial institutions. Under Section 3124 of Title 31 of the U. S. Codes (formerly Section 742) states can include in their corporate franchise or income taxes the income from United States obligations only if the tax is:

". . . a non-discriminatory franchise or other non-property tax imposed in lieu thereof upon corporations. . ."

By splitting the Montana Corporation License Tax into two types of taxes, and imposing a general corporation license tax upon non-financial institutions, and a separate and different tax upon financial institutions and at a higher rate there is no longer "a non-discriminatory" franchise tax and that the State of Montana can no longer include in the measure of the tax interest from United States obligations. This would put in jeopardy the State of Montana's victory in the case of Ted Schwinden, et al., v. Burlington Northern, Montana Supreme Court Cause No. 83551, decided November 23, 1984. In the Schwinden case the question was whether or not the Montana Corporation License Tax was in fact the type of act permitted under 31 U.S.C. 3124.

THIS BILL GOES CONTRARY TO THE TREND AMONG STATE GOVERNMENTS TO UNIFY AND SIMPLIFY THE TAXATION OF FINANCIAL INSTITUTIONS:

In order to protect national banks from discriminatory or excessive state and local taxation, Congress, following the Civil War, dictated how states and local governments could tax banks. Until 1923 the only tax that could be imposed against national banks was a tax upon their bank shares. Following 1923 four different methods of taxation were permissible under federal law. However, the use of one method prohibited the use of any of the other three methods of taxing national banks. In 1969 Congress apparently recognizing the problems which had been created by

its attempts to protect national banks from state taxation amended the law to provide:

> "For the purposes of any law enacted under the authority of the United States or any state, a national bank shall be treated as a bank organized and existing under the laws of the state or other jurisdiction within which its principal office is located."

This cleared the way for states and local taxing jurisdictions to include national banks (and therefore for fairness state banks) within the body of corporate taxpayers and to tax them uniformly with other corporations. As pointed out by Edward L. Symons, Jr., Professor of Law, University of Pittsburg School of Law, in his 1982 article entitled "State Taxation Of Banks: Federal Limitations" the trend has been for "unification and simplification" of bank taxation. Professor Symons states on page 841 of his article:

> "For most states, unification and simplification of the tax structure now has many advantages, not the least of which is that it would make the tax system easier for all to understand and less susceptible to attack. The enormous complexity of many states' fiscal systems, such as bank taxation, may be viewed are largely senseless today, as the historical reasons for the system have disappared."

Since federal law no longer dictates that banks be taxed only under a bank share tax or other specified type of taxation, it only makes sense for states to tax banking corporations or other financial institutions as any other business corporation.

The bill further discriminates against "financial institutions" because it does not apply the special rule to all corporations. Only "financial institutions" would be assessed an ad-

ditional tax if they paid less than the average amount of "personal property tax." If the theory is sound, and it is not, it should be applied uniformly to all corporations. Additionally it should be pointed out that by eliminating financial institutions from the computations of the average amount of personal property tax paid, you skew the average because it no longer is truly the average of all corporations.

TECHNICAL DIFFICULTIES WITH THE BILL:

1. Scope of The Act.

This special act would apply to "financial institutions" and any corporation which "employs monied capital in such a manner as to bring it into substantial competition with a bank" other than insurance companies, credit unions and retail companies extending credit. As this Committee knows the banking industry is the subject of deregulation. In short, everyone is getting into the banking business, but only after extensive court litigation would it be truly determined what corporations are actually employing monied capital in competition with banks.

2. Timing Of The Computation.

The theory of the bill seems to be that banks and other financial institutions would be required to pay an additional tax "based on net income for the next preceeding taxable year." What is the "next preceeding taxable year"? Also, how do you match the time period for payment of personal property tax with that of the income? The income taxes are paid on the previous year's income

with calendar year returns due May 15th of the following year. Fiscal year taxpayers must file on the 15th day of the fifth month following the close of their taxable year. It would appear difficult to match the taxable periods.

3. Difficulty Of Information Gathering.

The Department of Revenue would be required under this bill to ascertain the total amount of net income of all corporations doing business in Montana, including multi-state, multi-national corporations whose income is apportioned to Montana. In addition, the Department of Revenue would have to determine the total amount of "personal property tax" paid by each such corporation during the taxable periods which are going to be used. This could be an expensive undertaking.

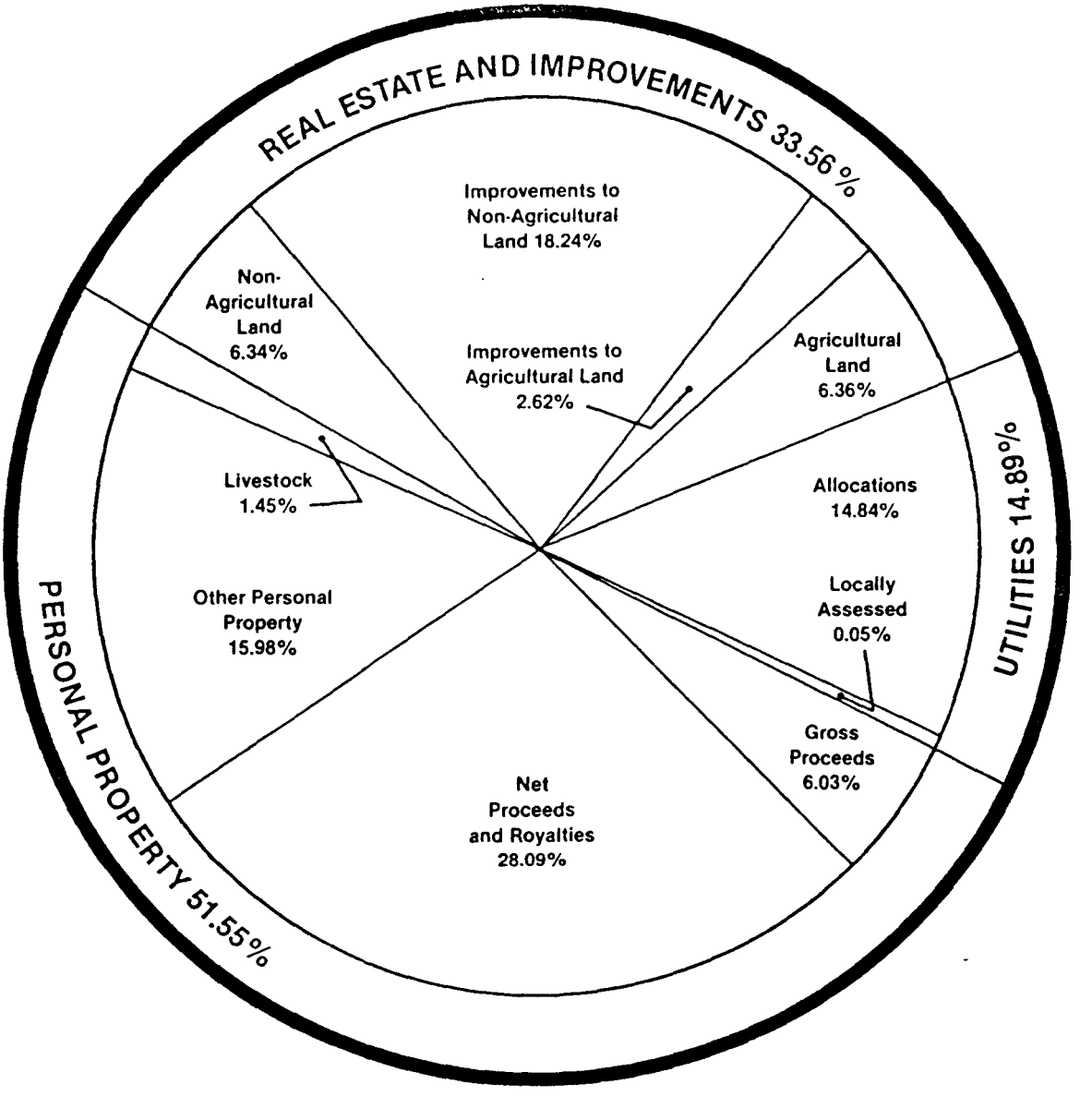
4. What Is A "Personal Property Tax".

According to the Department of Revenue's 1982 report (chart attached) to the Legislature, 51.55% of the tax base was represented by personal property taxes. Of this 34.12% of the tax based was represented by gross and net proceeds of mines and oil and gas. The net and gross proceeds of mines, while a personal property tax, actually represents two-thirds of the personal property taxes reported by DOR for 1982. 15.98% was "other personal property." Livestock accounted for 1.45% of the total tax base, and locally assessed utility properties represented one-half of 1% of the total tax base. In California, where banks are not subject to certain taxes, there have developed serious questions as to what consti-

tutes a personal property tax. The primary area is in the area of "fixtures." That is personal property which has been affixed to real property and thus the tax thereon constitutes a real property tax. This California problem is discussed in 40 Southern California Law Review where at page 669 the author states:

> "Secondly, by use of the unpredictable 'fixtures' doctrine, local governments are able to tax bank equipment as real property - - thereby magnifying the inequitable tax procedures."

In Montana it might be equally as difficult to determine what constitutes a personal property tax, what is a tax upon fixtures, and what is a tax upon real property or improvements thereto?



ANALYSIS OF THE 1982 TAX BASE

Exhibit 3
HB 948
3/29/85
Geo. Bennett

CALIFORNIA STATE TAXATION OF BANKING INSTITUTIONS

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I. Background of Bank Taxation.

A. Historical Perspective.

California taxation of banks commenced in 1910 in the form of a tax on the capital stock of banks, the only permissible method of taxation at that time under Revised Statutes § 5219, 12 U.S.C. Sec. 548. See Cal. Const. Art. XIII, § 14 (1910). The California Constitution was amended in 1928 to provide for the imposition of a tax upon all banks located in California "according to or measured by their net income." The tax was to be "in lieu of all other taxes . . . except taxes upon their real property." Cal. Const. Art. XIII, § 16 as adopted Nov. 6, 1928. The new tax was in accordance with a 1926 amendment to § 5219, Revised Statutes which permitted a state to tax national banks "according to or measured by their net income" (in addition to other methods) but only "in lieu of" any other taxes imposed upon them except taxes upon their real property.

Pursuant to the new constitutional provision, the California legislature adopted the Bank and Corporation Franchise Tax Act which imposed an annual tax upon every state and national bank located in California "according to or measured by its net income" which was "in lieu of all other taxes" on such banks "except taxes upon their real property." 1929 Cal. Stats. ch. 13 § 1, p. 19. The California Bank and Corporation Tax Law adopted in 1949 carried over the substance of the 1929 enactment. Cal. Rev. & Tax. Code, Div. 2, Pt. 11, as added by 1949 Cal. Stats. ch. 557 § 1, p. 964. For a discussion of the original tax and its development see Traynor, National Bank Taxation in California, 17 Cal. L. Rev. 83, 86 (1929); Traynor and Keesling, Recent Changes in the Bank and Corporation Franchise Tax Act, 21 Cal. L. Rev. 543 (1933); Ricks and Polichar, Taxation of National Banks and Bank Fixtures: Inequitable Methods, Unpredictable Law, 40 So. Cal. L. Rev. 669 (1967); Security-First Nat. Bank of Los Angeles v. Franchise Tax Board, 55 Cal. 2d 407, 359 P.2d 625, 11 Cal. Rptr., 289 (1961), cert. denied, 368 U.S. 3 (1961).

B. Discussion of Constitutional and Statutory Provisions.

The California constitutional provision as adopted in 1928 authorizing the franchise tax on banks was replaced in 1974 by Article XIII, § 27 which now provides:

> The Legislature, a majority of the membership of each house concurring, may tax corporations, including State and national banks, and their franchises by any method not prohibited by this Constitution or the Constitution or laws of the United States. Unless otherwise provided by the Legislature, the tax on State and national banks shall be according to or measured by their net income and shall be in lieu of all other taxes and license fees upon banks or their shares, except taxes upon real property and vehicle registration and license fees.

The basic provisions of the bank and corporation tax law implementing the California constitution are § § 23181 and 23182, Cal. Rev. & Tax. Code, which were amended by Assembly Bill 66 adopted by the legislature in 1979 and effective January 1, 1980.1 Section 23181 makes clear that the California bank franchise tax is intended to be in conformity with the fourth method of state taxation of banks authorized by § 5219, Revised Statutes as amended in 1926. In spite of the fact that § 5219, Revised Statutes was amended in 19692 to remove by January 1, 1973 most of the federal limitations upon state taxation of national banks, and in particular the four methods authorized by the 1926 amendment, the California statute has not been amended to reflect the change in federal law. Thus the California tax on banks is based upon and reflects the limitations which Congress previously placed upon state taxation of banks, most of which are no longer in effect. The main effect of continuing these limitations is tolcontinue the higher franchise tax rate upon banks and the exemption of banks from most other state and local taxes. Before January 1, 1980 banks were exempt from all other state and local taxes except real property taxes and vehicle registration and license fees. National banks were also held to be exempt as consumers from sales tax for the period prior to December 24, 1969, the date of the amendment of Revised Statutes § 5219 by

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1979 Cal. Stats. ch. 1150.

See Pub. L. No. 91-156, 83 Stat. 434 (1969) and Pub. L. No. 93-213, 85 Stat. 775 (1971).

Pub. L. No. 91-156. Diamond National Corp. v. State Board of Equalization, 49 Cal. App. 3d 778, 123 Cal. Rptr. 160 (1975), reh. denied, 425 U.S. 1000 (1976) and on remand 60 Cal. App. 3d 283, 131 Cal. Rptr. 528 (1976). Litigation is pending to determine whether state banks were also exempt from sales tax for the same period and whether both national banks and state banks are exempt from sales tax for the period December 24, 1969 to January 1, 1980.

The amendments to the franchise tax law made by A.B. 66 as they affect banks and financial corporations are discussed below.

II. Special Problems Relating to the Bank Franchise Tax.

A. Computation and Application of Additional Rates.

The provisions of the California franchise tax are generally applicable both to banks and general corporations. Because of the exemption of banks from many other state and local taxes, however, the franchise tax provides for a higher tax rate on banks than on general corporations. The higher rate also applies to financial corporations as discussed hereinafter. Prior to A.B. 66 the additional tax rate for banks usually exceeded the rate for general corporations by about 4%. For the past several years the tax rate for general corporations has been 9% and the rate for banks has been about 13%.

The tax rate applied to banks is the same basic rate applied to general corporations plus an additional rate that is computed by formula. Prior to January 1, 1980 the additional rate was determined by the ratio that California personal property taxes paid by general corporations bears to the net income of such corporations apportioned to California. The additional rate is determined annually by the California Franchise Tax Board. See § § 23186, 23186a, Cal. Rev. & Tax. Code. These sections provide generally for the procedure to be followed by the Board in computing the additional tax rate. The procedure and method of calculating the rate was upheld by the California Supreme Court in Security-First National Bank v. Franchise Tax Board, supra.

Under the California franchise tax, financial corporations are subject to the higher franchise tax rate applicable to banks. The theory behind the higher rate for financial corporations is that they are in competition with banks and should be subject to taxation on the same basis as banks.

Prior to A.B. 66 the tax burden on financial corporations was not identical to that imposed upon banks because financial corporations were not exempt from other state and local taxes. Therefore, the franchise tax law provided financial corporations with a credit for most, but not all, the other state and local taxes. See § 23183, Cal. Rev. & Tax. Code.

The term "financial corporation" is not defined in the Revenue and Taxation Code, but has been generally defined by the cases as applying to corporations which are in competition with national banks and deal in moneyed capital. Examples of such institutions are savings and loan associations, mortgage lending institutions, credit unions, and credit card companies. See Appeal of Continental Securities Co. (SBE Feb. 3, 1944) 3 Cal. Tax Cases 189; Appeal of California State Employees Credit Union No. 1 (SBE Dec. 13, 1961) CCH Cal. Tax Rep. § 201-874; and Appeals of Diners Club, Inc. (SBE Sept. 1, 1967) CCH Cal. Tax Rep. § 203-737.

B. Recent Amendments Relative to Additional Rate and Exemption of Banks and Financial Corporations from Other Taxes.

The following summary of A.B. 66 is taken in part from a review of the legislation prepared by the Section of Taxation of the California State Bar Association.

A.B. 66 is an omnibus tax act which increases the exemption of business inventory from personal property tax to 100%; increases the general corporation tax rate; subjects banks to the $200 minimum franchise tax; subjects banks to specified additional taxes (sales and use taxes, state energy resources surcharge and state emergency telephone users surcharge); extends the in-lieu provision now applicable to banks to financial corporations; revises the financial rate formula to include business license fees; limits the financial rate (current limit is 13%); and provides that revenue collections attributable to the financial rate will be distributed to cities and counties.

For 1980, the basic corporate rate will be increased from 9% to 9.6%. For 1981, 1982, and 1983, the rate will depend on total bank and corporation tax net cash collections. For example, the rate for 1981 will vary from 9.4% to 9.6% depending on total bank and corporation tax revenue collections for 1979/80.

Beginning in 1980, banks will be subject to the $200 minimum franchise tax and will also not be exempted under the

statutory in-lieu provision from sales and use taxes. In 1981, the in-lieu exemption will be further reduced so that banks will have to pay local utility users taxes, state energy resources surcharge, and the state emergency telephone users surcharge. Thus banks will be paying these taxes starting in 1981.

Beginning in 1981, financial corporations will be included in the in-lieu bank provision. Thus financial corporations will be treated like banks in that they will be exempted from the same local taxes as banks. Because financial corporations will no longer be subject to most local taxes the offset currently allowed for such taxes against the financial rate will be gone, starting in 1981. However, unused offsets from prior years can be carried over for six years. A.B. 66 specifically provides, however, that these new provisions relating to financial corporations do not apply to "any corporation, including a wholly owned subsidiary of a bank or bank holding company, if the principal business activity of such entity consists of leasing tangible personal property." § 23183, Cal. Rev. & Tax. Code, as amended.

As stated before, the bank rate is determined by the Franchise Tax Board based upon the amount of personal property taxes paid by general corporations and their net income. For income years ended in 1978 and 1979, this procedure will be retained. For 1980, the bank rate will be statutorily set at 11.6% (2% over general rate of 9.6%). For 1981, the bank rate will be the general rate (which will vary from 9.4% to 9.6%) plus 2%. For 1982 and thereafter, the Franchise Tax Board will again determine the bank rate, based on personal property taxes and, in addition, business license taxes paid by general corporations and the amount of general corporation net income. For 1982 and thereafter, the maximum bank rate cannot exceed 12%.

Beginning in 1980, the Department of Finance will estimate the amount of revenue which is attributable to the excess of the financial rate over the general rate. This amount will then be transferred by the Controller from the General Fund to the Financial Aid to Local Agencies fund (FALA fund) for distribution to cities and counties. Each year the Franchise Tax Board shall determine actual collections and the amounts in the FALA fund will be adjusted accordingly. This provision will require additional administrative procedures to "trace" the revenues attributable to the "add-on" portion of the bank's rate.

After this act was sent to the Governor, it was discovered that it did not increase the corporation income tax rate for

1980 and thereafter to correspond to the corporation franchise tax rate increase. This omission was not intended and it is assumed that remedial legislation will be enacted early in 1980. The corporation income tax applies to corporations that derive income from sources within California but are not sufficiently involved in California activities to be subject to the franchise tax. See § 23501, et seq., Cal. Rev. & Tax. Code. The method of determining net income and the applicable rates have been the same under both taxes.

C. Defining Bank Exemption from Other Taxes.

1. Personal Property Tax.

As noted previously, the tax imposed upon banks located in California under the California Bank and Corporation Tax Law was declared to be in-lieu of all other taxes on such banks "except taxes upon real property and vehicle registration and license fees." Cal. Const. Art. XIII, § 27 (1974). The classification of certain items of property as realty or personalty for ad valorem property tax purposes has taken on added significance as the result of this in-lieu provision. This is so because banks are subject to real property taxes but exempt from personal property taxes thereunder.

The focal point of current controversy in this area concerns the classification of data processing equipment. In 1964, the California Court of Appeal held certain electronic computer systems to be realty. Bank of America v. County of Los Angeles, 224 Cal. App. 2d 108, 114, 36 Cal. Rptr. 413 (1964). However, the precedential value of this decision is questionable today due to the substantial technological advances in the computer field. An article is regarded as annexed to realty, and thus classifiable as realty rather than personalty, if it is affixed thereto either by physical attachment or by force of gravity. Rinaldi v. Goller, 48 Cal. 2d 276, 279, 309 P.2d 451 (1957). While data processing equipment in use in the early 1960's may be said to qualify as realty under this test of annexation, modern computer systems may not due to their decreased bulk and increased maneuverability.

An ancillary question presented with respect to data processing equipment classifications concerns the application of the so-called unit-for-use rule. Under this rule, portable articles which otherwise qualify as personalty are deemed realty if they are specially designed for use in connection with annexed equipment. Southern Cal. Tel. Co. v. State Board of Equalization, 12 Cal. 2d 127, 137-138, 82 P.2d 422 (1938).

The full parameters of the application of this rule to peripheral data processing equipment is still in the process of judicial resolution. The Bank of America v. County of Los Angeles decision, supra, endorsed the application of this rule to electronic computer systems on the peculiar facts there presented. However, the interchangeability of such peripheral equipment has increased in the intervening years.

2. Sales and Use Taxes.

As stated previously, national banks were held exempt from the sales tax under Revised Statutes § 5219 prior to amendment on December 24, 1969. Litigation is pending to determine the exemption of national banks subsequent thereto under both federal law and state law, as well as the exemption of state banks under state law. Both national and state banks have been exempt from use tax because it was always clear under state law that the burden of the use tax was on the consumer bank even if the burden of the sales tax was in doubt. As noted before, under A.B. 66, banks will be subject to sales and use taxes after January 1, 1980.

3. User or Service Fees.

Article XIII, § 27 of the California Constitution states that "[u]nless otherwise provide by the legislature, the tax on state and national banks shall be according to or measured by their net income and shall be in lieu of all other taxes and license fees upon banks or their shares, except taxes upon real property and vehicle registration and license fees." The January 1, 1980 amendment to Cal. Rev. & Tax. Code § 23182 effected by Assembly Bill 66 retains the in-lieu method of taxation, but expands the list of permissible state and local exactions falling outside the in-lieu umbrella.

The in-lieu provision contained in § 23182 exempts California banks and financial corporations from all other "taxes and licenses, state, county and municipal" upon said banks except those expressly authorized. The question has arisen whether certain state and local exactions qualify as "taxes" or "license fees" within the meaning of this in-lieu provision. Thus it has been maintained that exactions levied as a charge for special benefits accruing to the taxpayer rather than as a general revenue raising measure could be characterized as a user fee or service charge which under analogous authority, could be said to be neither a "tax" nor a "license" within the intendment of the in-lieu prohibition. If this were so, such exactions could validly be imposed in addition to the California franchise tax on banks.

Such a distinction between a tax and a service charge has been recognized in conjunction with the determination of whether an exaction is deductible as a tax for federal income tax purposes. E.g., Roth v. Commissioner, 17 T.C. 1450, 1454 (1952), acq. 1952-2 C.B. 3. As touched upon above, this distinction turns upon whether the exaction is levied with a view toward the production of revenue or whether it was merely intended as the quid pro quo for special benefits accruing to the taxpayer. Holeproof Hosiery Co. v. Commissioner, 11 B.T.A. 547, 553-555 (1928). Another source of analogy can be found in the area of intergovernmental tax immunity. For example, in Commonwealth of Massachusetts v. United States, 548 F.2d 33 (1st Cir. 1977), aff'd, 435 U.S. 444 (1978), the court rejected the state's challenge of a federal tax on the use of taxable civil aircraft upon the grounds that this exaction was a charge for services rendered and not a tax. Id. at 36. Finally, California courts have recognized a comparable distinction with respect to special assessments levied upon the basis of equivalent benefit in the area of ad valorem property taxation. E.g., Estate of Simpson, 43 Cal. 2d 594, 597-598, 275 P.2d 467 (1954).

III. Apportionment of Multistate and Multinational Operations.

A. Franchise Tax Board Guideline.

California has adopted the Uniform Division of Income Tax Purposes Act (UDITPA) in substantial part and utilizes the traditional three factors of property, payroll and sales for purposes of apportioning business income to the state. Cal. Rev. & Tax. Code § 25128. In this regard, the UDITPA provisions regarding the determination of values included within these three factors have been incorporated within the California Revenue and Taxation Code. Cal. Rev. & Tax. Code § § 25129-25137. However, California has adhered to its pre-UDITPA practice of combining banks as well as general corporations for purposes of formula apportionment.

With respect to banks and financial corporations conducting business activities within and without the state, a special apportionment guideline has been developed by the California Franchise Tax Board. This guideline was formulated pursuant to § 25137, Cal. Rev. & Tax. Code and Franchise Tax Board Regulation 25137, CCH Cal. Tax Rep. § 12-448A. Under the regulation special departures from the usual allocation and apportionment rules may be established on an industrywide basis where necessary to more fairly reflect the extent of the taxpayer's activity within the state.

The Guideline for Apportionment of Income of Banks and Financial Corporations (Form FTB 1036), applicable to such institutions for income years commencing after December 31, 1975, departs from the usual apportionment rules in several particulars. It provides that intangible personal property, including coin and currency, shall be taken into account for property factor purposes. This is in contrast to the UDITPA directive that only real and tangible personal property be considered in arriving at the property factor. The Guideline further specifies that the sales factor shall be determined with reference to gross receipts rather than gross sales as prescribed by UDITPA.

Intangible personal property is to be included at its tax basis for federal income tax purposes, and its situs is to be determined under special attribution rules. Assets in the nature of loans (including federal funds sold and banker's acceptances) and installment obligations shall be attributed to the state of the office at which the customer first applied for the loan. "Applied" means the initial inquiry involving customer assistance in preparing the loan application or submission of a completed loan application, whichever occurs first. Loans initiated through solicitation by a traveling loan officer shall be attributed to the state where the office out of which he operates is located. The above two attribution rules are inapplicable in those instances where the appropriate banking regulatory authority recognizes the situs of the loans to be elsewhere. Credit card receivables shall be attributed to the residence of an individual cardholder or the commercial domicile of a corporate cardholder. If the taxpayer is not taxable in such state, however, such receivables shall be attributed to the state of the taxpayer's commercial domicile. Investments in securities, the income of which constitutes business income, shall be attributed to the taxpayer's commercial domicile except with respect to those securities used to maintain reserve deposit requirements or to collateralize public or trust funds deposits. With respect to these exceptions, the former shall be attributed to each state based upon the ratio that total deposits in the state bear to total deposits everywhere and the latter shall be attributed to the banking office at which such public or trust funds are deposited.

Receipts from intangible personal property are also governed by attribution rules. The interest and other receipts generated by the intangible personal property are regarded as having their situs in the same state as the underlying property under the attribution rules discussed above. Fees or charges associated with the issuance of travelers cheques and money orders shall be attributed to the state of the taxpayer's

office issuing the travelers cheque or money order. If travelers cheques or money orders are issued by an independent representative, receipts therefrom shall be attributed to the state in which the independent representative issues them unless the taxpayer is not taxable in that state in which event the receipts shall be attributed to the commercial domicile of the taxpayer.

California has adopted special apportionment legislation in regard to international banking facilities (IBFs) following the action of the Federal Reserve Board in amending Regulation D to permit banks to establish IBFs at locations within the United States. Section 204.8, Regulation D, 12 CFR part 204. IBFs are limited generally to accepting deposits from foreign sources and making loans to foreign entities for use outside the United States, which deposits and loans are required to be recorded on a separate set of books of the United States banks.

The California apportionment legislation relating to IBFs is found in Sections 23044 and 25107, Cal. Rev. & Tax. Code. Section 23044 defines an "international banking facility" as

> a facility represented by a set of asset and liability accounts segregated on the books and records of a commercial bank, the principal office of which is located in this state, and which is incorporated and doing business under the laws of the United States or of this state, a United States branch or agency of a foreign bank, an Edge corporation organized under Section 25(a) of the Federal Reserve Act, 12 United States Code 611-631, or an Agreement corporation having an agreement or undertaking with the Board of Governors of the Federal Reserve System under Section 25 of the Federal Reserve Act, 12 United States Code 601-604(a), that includes only international banking facility time deposits (as defined in subsection (a)(2) of Section 204.8 of Regulation D (12 CFR Part 204), as promulgated by the Board of Governors of the Federal Reserve System), and international banking facility extensions of credit (as defined in subsection (a)(3) of Section 204.8 of Regulation D).

Section 25107 provides that for the purposes of the allocation and apportionment of income under California law, including UDITPA,

> an international banking facility maintained by a bank within California shall be considered located without the state. Intangible personal property and sales reflected on the segregated books and records maintained pursuant to Section 23044 and recognized by the Board of Governors of the Federal Reserve System as attributable to the international banking facility shall be attributed to that international banking facility in determining the property, payroll and sales factors of the bank.

Section 25107(b) defines "bank" in the following language.

> As used in this section, "bank" means a commercial bank, the principal office of which is located in this state and which is incorporated and doing business under the laws of the United States or of this state, a United States branch or agency of a foreign bank, an Edge corporation organized under Section 25(a) of the Federal Reserve Act, 12 United States Code 611-631, or an Agreement corporation having an agreement or undertaking with the Board of Governors of the Federal Reserve System under Section 25 of the Federal Reserve Act, 12 United States Code 601-604(a)."

Sections 23044 and 25107 were adopted in 1981 and are applicable for income years ending on or after December 3, 1981. The California legislation has a sunset provision whereby the legislation is effective only until January 1, 1989 but it may be extended by legislation adopted before that date. The legislation requires a report to be made to the legislature by the Department of Finance and the Legislative Analyst regarding the economic impact and the tax implications of the legislation by December 31, 1986.

B. Application of Unitary Doctrine to Banks.

The unitary doctrine as applied under the California franchise tax law requires single corporations to apportion multistate or multinational income on a unitary basis in most instances. It also requires corporate members of an affiliated group to apportion similar income on a unitary basis under certain circumstances. In regard to an affiliated group the principal requirements for a unitary report are that the parent or some member of the group must own over 50% of the stock of

each member of the group and all members of the group must have a definite business relationship. For non-banking corporations the basic criterion for demonstrating business relationship is substantial intercompany sales. See Butler Bros. v. McColgan, 17 Cal. 2d 664, 111 P.2d 334 (1941), aff'd 315 U.S. 501 (1942); Edison California Stores, Inc. v. McColgan, 30 Cal. 2d 472, 183 P.2d 16 (1947). The California Franchise Tax Board, however, is greatly expanding the scope of the doctrine. The Board seems to be minimizing the requirement of intercompany sales and putting a greater emphasis upon such factors as centralized management and services. See Franchise Tax Board Regulation 25120(b)(3), CCH Cal. Tax Rep. para. 12-418A. Compare Superior Oil Co. v. Franchise Tax Board, 60 Cal. 2d 406, 386 P.2d 33, 34 Cal. Rptr. 545 (1963); Honolulu Oil Corp. v. Franchise Tax Board, 60 Cal. 2d 417, 386 P.2d 40, 34 Cal. Rptr. 552 (1963). In any event, because most of the activities in which banks and bank holding companies can participate under regulatory laws and regulations are related to banking, the Franchise Tax Board takes the position that most, if not all, divisions and subsidiaries of banks and bank holding companies are members of a unitary group.

It should be noted, however, that the Board's broad definition of the unitary group is under challenge in the courts. (See Container Corp. of America v. Franchise Tax Board, San Francisco Superior Court No. 673-492, on appeal Calif. Court of Appeal, 1st District; Firestone Tire & Rubber Co. v. Franchise Tax Board, Los Angeles Superior Court No. C31243.) It may be that these, or other cases, will force the Board into a more limited definition of the unitary group. It is difficult to say, however, what the impact would be on the banking industry because, as stated before, divisions and subsidiaries of banks are usually closely related to the banking business.

Under the unitary doctrine, California-based banks are required by the Board to file a combined report including income from operations and subsidiaries of the bank or its holding company located in all of the states as well as all foreign countries. The total net income of the group is then apportioned to California generally under the apportionment guideline discussed in the immediately preceding part of this memorandum. Since most other states and foreign countries do not require, or permit, such a combined report, but instead require corporations to file separate reports, it is almost inevitable that income of members of the group earned in some other jurisdictions will also be included in the combined report. The California franchise tax law provides no credit for taxes paid to other jursidictions.

The Franchise Tax Board also applies the same unitary rules to banks or bank holding companies headquartered in other states which have subsidiaries operating in California.

The Board has pushed the unitary doctrine even further so that it applies to foreign-based multinationals which have a branch or subsidiary operating in California. Under the Board's theory a foreign-based multinational must file a combined report which includes the income of the parent and all 51% owned subsidiaries whether or not they operate in California, or even in the United States. The combined income is then subject to apportionment. This application of the unitary doctrine applies both to general commercial corporations and to banks and financial corporations.

In one case involving a foreign bank, the Board has sought to apply the California franchise tax upon the corporate group consisting of a foreign bank parent, foreign subsidiaries and a California bank subsidiary on a unitary basis. This means that the Franchise Tax Board is asserting deficiencies on the ground that the foreign parent and all affiliates or subsidiaries including the subsidiary operating in California were members of the unitary group and the income of the California subsidiary must be determined on that basis. The case for some of the years is at the State Board of Equalization level and for other years still at the Franchise Tax Board level. (Taxpayers can take an administrative appeal from the Franchise Tax Board to the State Board of Equalization.) In that case, the unitary method including the foreign parent and affiliates greatly increases the taxable income of the California subsidiary over the separate accounting method.

The extension of the unitary doctrine on a worldwide basis is being challenged in several lawsuits now progressing through the California court system (Container Corporation and Firestone cases, supra) and one in the federal courts (E.M.I. v. Franchise Tax Board, U.S. Dist. Ct., No. Dist. Calif., So. Div. No. C 792146 CBR). The cases are challenging the application of the doctrine on a worldwide basis both as an unwarranted extension of the doctrine as established under the California statutory and case law and as violating the United States Constitution, particularly the constitutional restraints on state taxation of foreign commerce as exemplified in the recent Supreme Court decision in Japan Line Ltd. v. County of Los Angeles, _____ U.S. _____, 47 U.S.L.W. 4477 (1979).

There have also been legislative efforts to eliminate the impact of the unitary doctrine to the foreign operations of banks both at the congressional level (S. 719, Cranston) and at the California legislative level (A.B. 525, Hughes). Both

bills were introduced in 1979 based upon earlier proposals. S.719 would prevent the states from including in a combined report the income of foreign branches and foreign subsidiaries of United States banks or holding companies, and also foreign parents and affiliates where the parent owns or controls subsidiaries or branches operating in the United States. The Hughes bill would prevent the application of the unitary doctrine only in regard to foreign parents and affiliates which have California branches or subsidiaries. The Hughes bill applies both to banks and commercial corporations. For federal bills introduced in 1979 which would prevent the application of the unitary doctrine to foreign commercial corporations see S.983 (Mathias), S.1688 (Mathias) and H.R. 5076 (Jones).

The recently negotiated United States-United Kingdom Income Tax Treaty would have prevented the application of the unitary doctrine by states to United Kingdom parent corporations and non-United States affiliates. See Article 9(4) U.S.-U.K. Income Tax Treaty executed December 31, 1975. The United States Senate, however, ratified the treaty but reserved approval of Article 9(4). Thereafter the United States and United Kingdom governments negotiated a new protocol removing Article 9(4) which has been approved by the United States Senate, but not yet considered by Parliament.

The application of the unitary doctrine to banks raises some particular problems under the California franchise tax law because, as stated earlier, banks and financial corporations are subject to an additional tax not applicable to general corporations and because banks and financial corporations are subject to a different apportionment formula than general corporations. Thus if there are general corporations included in the unitary group with banks and financial corporations a separate determination must be made of the general corporation's net income so it can be taxed at the lesser tax rate. See Franchise Tax Board Legal Ruling No. 370, CCH Cal. Tax Rep. para. 205-085 which sets forth special rules for apportioning the income and determining the portion of the income to be subject to the higher bank rate. After issuing the ruling the Board announced that the ruling assumes that the general corporation is the dominant member of the unitary group, and where the financial corporation is dominant Franchise Tax Board Guideline Form FTB 1036 should be applied in determining the apportionment of income of the banks and financial corporations involved in the group. The standard UDITPA provisions are applicable in apportioning the income of the general corporations which are members of the group. See CCH Cal. Tax Rep. para. 205-526.

IV. Exemption of Out-of-State Banks Upon Specific Transactions.

California has by statute defined certain activities which, when conducted by out-of-state lending institutions, shall not be considered doing business within the state nor support the imposition of a tax under the California Bank and Corporation Tax Law. Cal. Cor. Code § § 191(d), 2104. These activities include the acquisition or purchase of loans with a California situs if the activities underlying the acquisition are carried on from without the state, the inspection or appraisal by a non-resident employee of California real or personal property securing or proposed to secure any loan, the ownership of any loans with a California situs or enforcement thereof through judicial process, the engaging of a non-affiliated firm qualified to do business within California to make collections or service loans, and the acquisition of title to California real or personal property securing loans pending the orderly sale and disposition thereof. Cal. Corp. Code § 191(d).

The above-described restrictions upon the power of California to tax non-domiciliary financial institutions may not differ greatly from the limitations placed upon the several states by virtue of the commerce clause and due process clause of the United States Constitution. Whatever differences may exist in this respect are not entirely clear. As noted in the Report of the Special Subcommittee on State Taxation of Interstate Commerce of the Committee on the Judiciary, House of Representatives, submitted pursuant to Pub. L. No. 86-272 (88th Cong., 2d Sess., Comm. Print, June 15, 1964), the limitations inherent in the judicial process itself prevent the derivation of precise nexus standards of general application from the various decisions addressing the constitutionality of state taxation of interstate commerce. Id. at pp. 11-14.

In 1978 Assembly Bill 2827 was introduced in the California legislature for the purpose of subjecting out-of-state banks to the corporation income tax upon income from sources within the state. The exemptions provided by § § 191(d) and 2104, Cal. Corp. Code, would have remained, but other income from California sources (e.g., rents) would have been taxed at the bank rate. The bill was defeated in the California Senate. Apparently such income of out-of-state banks is not generally subject to the franchise tax because the banks are not "doing business" in the state, and it is not subject to the corporation income tax because (without an amendment similar to A.B. 2827) the tax does not apply to banks. As stated above, the California corporation income tax law (§ 23501, et seq., Cal. Rev. & Tax. Code) was adopted as a supplement to the franchise tax law. The corporation income tax is directed at

out-of-state general corporations having income from sources in the state, but which are not subject to the franchise tax because they are not actually doing business in the state.

V. Computation of Bad Debt Losses and Reserve for Bad Debts.

The computation of bad debt losses and a reserve for bad debts for banks is governed by Rev. & Tax. Code § 24348, which states that a deduction is allowed for debts which become worthless within the income year or in the discretion of the Franchise Tax Board for a reasonable addition to a reserve for bad debts. Under Franchise Tax Board Reg. 24348(b) banks may deduct annually from income either (1) debts ascertained to be worthless in whole or in part, or (2) a reasonable addition to a reserve for bad debts.

A. The Specific Charge-Off Method.

Where all the surrounding and attending circumstances indicate that a debt is worthless, either wholly or in part, the amount which is worthless and which is charged off within the year on the books of a bank is allowed as a deduction in computing the bank's net income. Where a debt ascertained to be worthless is credited to a specific reserve account for such debt, with the effect of removing the debt from the assets of the bank, instead of being charged off, such a credit is considered a charge-off and allowed as a deduction.

A bank, in order to charge off a debt and deduct it in computing its net income, must be able to demonstrate with a reasonable degree of certainty that the debt is uncollectable. The Board in determining the worthlessness of a debt has stated that it will look at all pertinent evidence including the collateral securing the debt. Regulation 24348(b) states that a showing that a debt is worthless, and that legal action to enforce payment would in all probability not result in the satisfaction of execution on a judgment, is sufficient evidence of the worthlessness of the debt for purposes of deducting it.

If a bank which is subject to supervision by federal authorities, or by state authorities maintaining substantially equivalent standards, charges off a debt in obedience to specific orders of such supervisory authorities, then the debt charged off is conclusively presumed to have become worthless during the year, if the amount so charged off is claimed as a deduction by the bank in the year the charge-off took place. If the bank seeks to claim the amount so charged-off as a

deduction in a later year, it loses the presumption of worthlessness and must show that the debt actually became worthless in that later year.

All recoveries on loans charged-off must be included in gross income in the year recovered if a deduction for the prior charge-off was claimed.

B. The Reserve For Bad Debts Method.

Under this method a bank may claim as a deduction in computing its net income a reasonable addition to its reserve for bad debts in an amount not to exceed the amount necessary to increase its reserve to the greater of:

(1) The product obtained by multiplying all loans outstanding at the end of the year by a ratio of (I) the total bad debts, adjusted for recoveries, sustained during the year and the preceding five years to (II) the sums of the loans outstanding at the close of such six years; or

(2) For income years beginning before January 1, 1985, the amount of bad debt reserve determined as of December 31, 1976, provided that for income years beginning after December 31, 1978, the reserve cannot exceed 10 times the reserve determined under (1); or

(3) The amount which the bank demonstrates is necessary to absorb anticipated losses in light of the prevailing conditions relating to the bank's portfolio.

A bank, in computing the amount of loans outstanding at the end of the year, must exclude government insured loans to the extent they are insured or guaranteed and loans secured by deposits to the extent they are secured or guaranteed by deposits over which the bank has control as to their withdrawal. Worthless bonds, although falling into the category of bad debts, are excluded from the reserve calculations. The amount determined as worthless in respect to bonds is allowed as a deduction in addition to the amount allowed as a deduction as an addition to the reserve for bad debts.

A newly-organized bank which does not have six years of loss experience is allowed to calculate the loss ratio in Method (1) by taking the average of any combination it may select of its own loss experience and the industry-wide loss experience for each of the six-year periods. The loss experience of California and Hawaii banks of comparable size as published by the Twelfth Federal Reserve District, may be used as the industry-wide average.

If several banks merge, the new entity must compute a new loss ratio. This new ratio is a combination of the loss ratios of each of the banks involved in the merger. Each loss ratio of each bank involved in the merger is multiplied by a ratio (the "merger ratio") of (I) the bank's outstanding loans at the date of the merger to (II) the total outstanding loans of all the banks involved in the merger at the merger date. The new loss ratio for the entity is the sum of the products obtained by multiplying each bank's loss ratio by the merger ratio. This method applies to all mergers, consolidations or acquisitions occurring within the six-year period from which the loss ratio is derived.

Law Review Commentaries

Review of the California tax on corporate franchises. Allen G. Wright (1913) 1 C.L.R. 91.

Notes of Decisions

In general 1
Double taxation 3
Local taxation 2

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1. In general

Property and franchise taxes which were levied and paid by a utility corporation for fiscal year ending July 1, 1935, computed on the basis of its gross receipts for the previous year constituted "ad valorem taxes". Southern California Edison Co. v. Johnson (1942) 131 P.2d 43, 55 C.A.2d 638.

Gross receipts tax is substituted tax, intended to be equivalent of property tax. Southern California Telephone Co. v. Los Angeles County (1931) 298 P. 9, 212 C. 121, followed 298 P. 13, 14, five cases 212 C. 786 to 789.

2. Local taxation

Companies claiming exemption of operative property from local assessments and taxation must show property belongs to them. Southern California Telephone Co. v. State Board of Equalization (Sup.1927) 259 P. 47; Pacific Telephone & Telegraph Co. v. State Board of Equalization (Sup.1927) 259 P. 42.

Leased instruments of telephone company paying gross earnings tax to state held not subject to local taxation. Hopkins v. Southern California Telephone Co. (1928) 48 S.Ct. 180, 275 U.S. 393, 72 L.Ed. 329.

Holding that public utility's property having dual use is subject to local taxation presents no question of violation of Fourteenth Amendment. Hobart Estate Co. v. Waters (1934) 32 P.2d 613, 220 C. 669.

That board of equalization, upon public utility's report including proceeds derived from "dual use" property, erroneously levied tax thereon, and that taxpayer voluntarily paid it does not bar local tax upon same property. Id.

Action of lessor owner in returning property used exclusively by lessee in its public utility business to local assessor did not estop lessor from claiming that property was not subject to local taxation. Third and Broadway Bldg. Co. v. Los Angeles County (1934) 32 P.2d 377, 220 C. 660.

Failure of lessee, a public utility, to report leased space as operative property to board of equalization did not preclude lessor owner from recovering local taxes illegally exacted on portion used exclusively by lessee in its utility business. Id.

Property used exclusively in telephone business by telephone company is exempt from local taxation, whether owned or merely leased by it. Morgan Adams, Inc. v. Los Angeles County (1930) 289 P. 811 209 C. 696.

3. Double taxation

Where counties in which "Dual Use Property" is situated tax such property, taxation by state of income derived from such property is in effect "double taxation" prohibited by law. Hobart Estate Co. v. State Board of Equalization (1934) 30 P.2d 407, 1 C.A.2d 328.

§ 23155. Credit for taxes collected under wrong subdivision of § 23151.1

In the event that taxes, interest and penalties have been or shall be assessed against, paid by or collected from a taxpayer under a subdivision of Section 23151.1, which assessment, payment or collection should have been made under a different subdivision, such taxes, interest and penalties shall be considered as having been assessed, paid or collected under such different subdivision as of the date or dates they were made.

(Added by Stats.1977, c. 552, § 3, eff. Sept. 3, 1977.)

Library References

Taxation ⇐318, 526. C.J.S. Taxation §§ 382, 394, 617, 1082

Article 3

TAX ON BANKS AND FINANCIAL CORPORATIONS

Sec.

Article 3 was added by Stats.1949, c. 557, p. 964, § 1.

Law Review Commentaries

Taxation of national banks and bank fixtures: Inequitable methods and unpredictable law. R. Bruce Ricks and Bruce M. Polichar. (1967) 40 So.Cal.L.R. 669.

§ 23181. Banks; imposition on net income; method of taxing national banking associations; tax on bank ceasing business, dissolving or withdrawing

(a) Except as otherwise provided herein, an annual tax is hereby imposed upon every bank located within the limits of this state according to or measured by its net income, upon the basis of its net income for the next preceding income year at the rate provided under Section 23186. With respect to the taxation of national banking associations, the state adopts the method numbered (4) authorized by the act of March 25, 1926, amending Section 5219 of the Revised

Statutes of the United States, Title 12, Section 548, United States Code.[1]

(b) If a bank commences to do business and ceases doing business in the same taxable year, the tax for such taxable year shall be according to or measured by its net income for such year, at the rate provided under Section 23186.

(c) With respect to a bank, other than a bank described in subdivision (b), which ceases doing business after December 31, 1972, the tax for the taxable year of cessation shall be:

(1) According to or measured by its net income for the next preceding income year, to be computed at the rate prescribed in Section 23186, plus

(2) According to or measured by its net income for the income year during which the bank ceased doing business, to be computed at the rate prescribed in Section 23186.

(d) In the case of a bank which ceased doing business before January 1, 1973, but dissolves or withdraws on such date or thereafter, the tax for the taxable year of dissolution or withdrawal shall be according to or measured by its net income for the income year during which the bank ceased doing business, unless such income has previously been included in the measure of tax for any taxable year, to be computed at the rate prescribed under Section 23186 for the taxable year of dissolution or withdrawal.

(Added by Stats.1949, c. 557, p. 964, § 1. Amended by Stats.1971, c. 1304, p. 2560, § 2, eff. Oct. 29, 1971; Stats.1972, c. 773, p. 1386, § 2; Stats.1977, c. 552, § 4, eff. Sept. 3, 1977.)

[1] 12 U.S.C.A. § 548.

Historical Note

The 1971 amendment added subds. (b) [now, subd. (c)] and (c) [now, subd. (d)].

The 1972 amendment substituted "a bank which ceases doing business, dissolves or withdraws" for "taxable years beginning" and "cessation, dissolution or withdrawal takes place" for "bank ceases doing business, dissolves or withdraws" in introductory paragraph of subd. (b) [now, subd. (c)]; substituted "before January 1, 1973" for "in a taxable year ending before January 1, 1972" and "dissolution or withdrawal takes place" for "bank dissolves or withdraws" in introductory paragraph of subd. (c) [now, subd. (d)]; and inserted "on such date or" in introductory paragraph of subd. (c) [now, subd. (d)].

Application to computation of taxes after Dec. 31, 1972, see Historical Note under § 23151.1.

The 1977 amendment inserted the exception at the beginning of subd. (a); designated the last paragraph of former subd. (b) [now, subd. (c)] as subd. (b); relettered former subds. (b), (c) to be subds. (c), (d); in subd. (c) inserted "other than a bank described in subdivision (b)" following "to a bank," following "doing business" it deleted "dissolves or withdraws," and following "taxable year" substituted "of cessation" for "during which the cessation dissolution, or withdrawal takes place; in subd. (c)(1) inserted "to be computed" and substituted "prescribed in" for "provided under;" it rewrote subd. (c)(2) which previously had read:

"(2) According to or measured by its net income for the taxable year of cessation of business, dissolution or withdrawal, at the rate provided under Section 23186.

"If a bank commences to do business and ceases doing business, dissolves or withdraws in the same taxable year, the tax for such taxable year shall be according to or measured by its net income for such year, at the rate provided under Section 23186." and it rewrote subd. (d) [formerly subd. (c)] which previously had read:

"(c) In the case of a bank which ceased doing business before January 1, 1973 but dissolved or withdrew on such date or thereafter, the tax for the taxable year during which the dissolution or withdrawal takes place shall be:

"(1) According to or measured by its net income for the income year next preceding the taxable year in which it ceased doing business, plus

"(2) According to or measured by its net income for the taxable year during which the bank ceased doing business, at the rate provided under Section 23186."

Amendment of this section by Stats. 1978, 1st Ex.Sess., c. 1, § 14, eff. April 20, 1978, was repealed June 7, 1978 by Stats. 1978, 1st Ex.Sess., c. 1, § 25. See Historical Note under Educ.C. § 41814.

Derivation: Stats.1929, c. 13, p. 19, §§ 1, 2; Stats.1933, c. 303, pp. 869, 870, §§ 1, 2; Stats.1939, c. 1050, p. 2934, § 1; Stats.1949, c. 513, p. 871, § 1.

Cross References

Banks, see Financial Code § 350 et seq.
Corporations not otherwise taxed and not expressly exempted, see § 23153.
Credit for taxes collected under wrong subdivision, see § 23188.
Deductions discriminatory as to national banking associations, see § 24371.
Estimated tax, tax shown on return, see § 25954.
Return for short period, placing income on annual basis, see § 24636.
Tax on preference income, application of this section, see § 23400.
Taxation of banks and corporations, see Const. Art. 13, § 27.
Time for filing returns, see § 25401.

Law Review Commentaries

Authorization of state taxation of national banks according to or measured by their net income. (1929) 17 C.L.R. 232.

Bank tax rate with respect to recent changes in the franchise tax act. (1933) 21 C.L.R. 543.

Changes in banking corporation's franchise tax act. (1934) 22 C.L.R. 499.

Changes in the bank and corporation franchise tax act. (1934) 23 C.L.R. 51.

Limitation of tax rate on national bank shares to that applicable to other moneyed capital in hands of individual citizens. (1929) 17 C.L.R. 81, 95.

1941 California appellate decisions on taxation, Bank and Corporation Franchise Tax Act. (1942) 17 S.Bar.J. 147.

Political and economic aspects of the taxation of banks and bank stock. (1929) 17 C.L.R. 357.

Power of states to tax national banks or national bank shares. (1929) 3 So. Cal.L.R. 52.

Protection of national banks by limiting states' tax to that rate assessed upon other moneyed capital. (1929) 17 C.L.R. 357, 361.

Public purpose in taxation. (1930) 18 C.L.R. 137; (1930) 18 C.L.R. 241.

Rate of taxation on national banks as compared to rates on mercantile manufacturing and business corporations. (1933) 22 C.L.R. 499.

Right of states to tax national banks. (1928) 16 C.L.R. 301, 314.

Source of power of state to tax national banks and national bank shares. (1929) 17 C.L.R. 83.

State taxation and the Supreme Court. (1939) 28 C.L.R. 1.

Taxation of shares of national bank. (1934) 22 C.L.R. 277.

Time of accrual of lien under the Bank and Corporation Franchise Tax Act of 1929. (1929) 17 C.L.R. 456, 522.

Validity of California tax on national bank shares. (1929) 17 C.L.R. 456, 471.

Library References

Taxation ⇐126. C.J.S. Taxation §§ 143, 144.

Notes of Decisions

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1. Validity

Where corporate franchise tax law provided for offset of personal property taxes paid by corporation and 10 per cent. of real property taxes, action of franchise tax commissioner assessing deficiency in reclassifying oil leases owned by corporation as real property as so regarded under state law rather than as personal property as assessed by county assessor did not deprive corporation of equal protection of laws. Barnsdall Oil Co. of California v. Merriam (D.C.1934) 8 F.Supp. 185.

Provision of Bank and Corporation Franchise Tax Act for corporate franchise tax but changing total allowable offset permitted by Constitution to 75 per cent. tax and allowing offset of 10 per cent. for real property taxes was not unconstitutional as taking property without due process, or as not within legislative power to change offsets. Id.

State taxation of a national bank at an approximate equivalent rate to that applied through all taxes on non-financial corporations is a valid and constitutional procedure. Franchise Tax Bd. v. Superior Court in and for Sacramento County (1951) 225 P.2d 905, 36 C.2d 538.

Stats.1929, c. 13, p. 19, requiring inclusion of interest from nontaxable securities in net income base by which state franchise tax of bank or corporation is measured was not unconstitutional as impairing obligation of contract. Pacific Co. v. Johnson (1931) 298 P. 489, 212 C. 148.

2. In general

Rev.St. § 5219 [12 U.S.C.A. § 548] furnishes the exclusive rule governing state taxation as to national banks. Bank of California, National Ass'n, v. Richardson (1919) 39 S.Ct. 165, 248 U.S. 476, 63 L.Ed. 372.

A national bank, being subject to state taxation as a federal agency only to the extent authorized by such act, is not taxable as a stockholder of a state bank. Id.

Imposition of tax on items of preference income of banks did not conflict with constitutional and statutory intent that tax on bank be according to or measured by net income; thus bank's constitutional rights were not violated by taxing portion of bad debt reserves exceeding actual bad debt losses and accelerated depreciation. First City Bank v. Franchise Tax Bd. (1977) 139 Cal.Rptr. 12, 70 C.A.3d 444.

Safety deposit boxes which were located in banks' vaults but which were not attached thereto and which could be moved without damage to building were nontaxable personal property, even though trim used on boxes gave them an appearance of permanence. Pajaro Val. Bank v. Santa Cruz County (1962) 24 Cal.Rptr. 639, 207 C.A.2d 621.

The Franchise Tax Act applies to corporations being liquidated. Hise v. McColgan (1944) 148 P.2d 616, 24 C.2d 147.

3. Nature of franchise tax

A corporation franchise tax is not one on income as such but for the privilege of exercising a corporation franchise measured by its net income. Rosemary Properties v. McColgan (1947) 177 P.2d 757, 29 C.2d 677.

The tax imposed by the Bank and Corporation Franchise Tax Act is not a "direct tax," "property tax", or tax for mere "privilege of being a corporation", but is a tax for "privilege of exercising corporate franchises," that is, "privilege of doing business" for purpose of gain or profit. Bank of Alameda County v. McColgan (1945) 159 P.2d 31, 69 C.A.2d 464.

4. Taxation of national banks

The personal property of a national bank cannot be directly assessed for taxation by state authorities. City and County of San Francisco v. Crocker-Woolworth Nat. Bank (C.C.1899) 92 F. 273.

Tax rate parity between national and state banking institutions is a prerequisite for any tax upon national banks. Western States Bankcard Ass'n v. City and County of San Francisco (1977) 137 Cal.Rptr. 183, 561 P.2d 273, 19 C.3d 208.

Former constitutional provision [Art. 13 § 16 (repealed; see, now, Art. 13 § 27)] governing imposition of state tax upon national banks was not self-executing and, in absence of legislative action requiring collection of taxes and fees upon bank-owned vehicles at any time between January 1, 1973, which was date of federal law authorizing such taxes, and November 5, 1974, which was date provision was repealed, state taxing authorities had no duty to collect vehicle taxes from national banks. Thomas v. Department of Motor Vehicles (1976) 131 Cal.Rptr. 164, 59 C.A.3d 731.

Provision of Public Law (12 U.S.C.A. § 548 note) deferring congressional authorization to tax national banks until January 1, 1973 was applicable to California vehicle taxes on national banks where taxes were imposed on banks prior to date of enactment and, therefore, were not authorized by affirmative action of the legislature until after the enactment. Id.

Provision of Public Law 91-156 (12 U.S.C.A. § 548) cancelling congressional authorization respecting taxes on national banks on date of enactment was not applicable to California vehicle taxes on national banks where this section and § 23182, enacted prior to date of enactment, expressly provided that annual tax imposed by state upon "every bank * * * according to or measured by its net income" was "in lieu of all other taxes * * * upon the said banks except taxes upon their real property." Id.

The excess franchise tax imposed on national banks by this section is in lieu of any tax on personal property. U. S. Nat. Bank of San Diego v. Los Angeles County (1965) 44 Cal.Rptr. 280, 234 C.A.2d 195.

5. Bank ownership of stock

Under Rev.St. § 5219, 12 U.S.C.A. § 548, authorizing states to tax stock of national banks to the owners of the shares, one national bank may be taxed as stockholder of another such bank. Bank of California, National Ass'n, v. Richardson (1919) 39 S.Ct. 165, 248 U.S. 476, 63 L.Ed. 372.

Rev.St. § 5219, 12 U.S.C.A. § 548, merely authorizing states to tax stock of national banks to the owners of the shares, does not allow stock of one national bank owned by another such bank, and so taxed to it, cannot be considered as assets of the owner bank for purpose of taxing its stockholders on their shares. Id.

Stock of a state bank owned by a national bank, but not taxable to it, is to be considered an asset of it, in determining the value of stock in it taxable to its stockholders. Id.

6. Foreign banks

A foreign banking corporation's right to do business in the state of California is taxable, under Const. Art. 12, § 15 (repealed 1972), declaring that no corporation organized without the limits of the state shall be allowed to transact business within the state on more favorable conditions than are prescribed by law to similar corporations organized under the laws of the state. London & San Francisco Bank v. Block (C.C.1902) 117 F. 900, reversed on other grounds 136 F. 138, 69 C.C.A. 136.

7. Retroactive taxes

The legislature can change or increase an excise tax during the term for which it is imposed without thereby interfering with vested rights. American States Water Service Co. of California v. Johnson (1939) 88 P.2d 770, 31 C.A.2d 606.

The 1935 amendment to Bank and Corporation Franchise Tax Act changing method of computing franchise tax for year 1935 did not unlawfully interfere with vested right of corporation to conduct its business in California during year 1935, notwithstanding that corporation had paid tax for such privilege before amendment became effective. Id.

8. Local taxes

Direct local taxes on California banks are clearly prohibited. Western States Bankcard Ass'n v. City and County of San Francisco (1977) 137 Cal.Rptr. 183, 561 P.2d 273, 19 C.3d 208.

Incidence of municipal gross receipts and payroll expense taxes fell upon an independent entity, viz., nonprofit, nonstock corporation formed by member banks to act as clearinghouse for bank credit transactions, not upon its member banks, and the relationship between the corporation and its members was not such as to justify disregarding its corporate status for tax purposes, notwithstanding its arguments that nonprofit organizations performing traditional banking functions exclusively for banks may themselves obtain "in lieu" tax treatment even though they are not banks, and that imposition of the subject taxes would result, by reason of corporation's peculiarly close connection with its members, in local taxation of member banks themselves. Id.

9. Delinquency

Provision in corporate franchise tax law that corporation failing to pay delinquent franchise tax would forfeit right to do intrastate business was applicable on failure of corporation to pay deficiency in tax as-

Note 9

sessed by franchise tax commissioner. Barnsdall Oil Co. of California v. Merriam (D.C.1934) 8 F.Supp. 185.

Under provision in corporate franchise tax law suspending corporation's right to do intrastate business where it did not pay franchise tax within 11 months after due date, 11 months' period began to run 10 days from notice and demand from franchise tax commissioner after tax deficiency became final. Id.

10. Testing validity

Where provision of corporate franchise tax law permitting corporation which had appealed to state board of equalization to test validity of tax by paying it under protest and suing for its recovery was repealed, corporation which had appealed to board could maintain suit in federal court to restrain enforcement of tax as means of testing its validity. Barnsdall Oil Co. of Cal. v. Merriam (D.C.1934) 8 F.Supp. 185.

11. Notice

Stockholders of a national bank are required to take notice of the law of the state providing for the assessment and taxation of their shares, and of a general law, creating a board of equalization and fixing the time and place where they may appear for the purpose of applying for a reduction of their assessments; and a notice required to be given to the bank of the assessment of the shares of its respective stockholders is sufficient notice to the stockholders, in connection with such statutory provisions. Nevada Nat. Bank v. Dodge (1902) 119 F. 57, 56 C.C.A. 145.

12. Evidence

Evidence that bank engaged in several normal banking activities while under conservator authorized finding that bank was "doing business," so as to be liable for franchise tax for such period. People v. Richardson (1940) 99 P.2d 366, 37 C.A.2d 275.

§ 23182. Banks; tax in lieu of other taxes except real estate or vehicle

The tax imposed under Section 23181 upon banks is in lieu of all other taxes and licenses, state, county and municipal, upon the said banks except taxes upon their real property and motor vehicle and other vehicle registration license fees and any other tax or license fee imposed by the state upon vehicles, motor vehicles or the operation thereof.

(Added by Stats.1949, c. 557, p. 964, § 1. Amended by Stats.1975, c. 575, p. 1154, § 3, eff. Sept. 6, 1975.)

Historical Note

The 1975 amendment added the words following "except taxes upon their real property".

Application of amendment by Stats.1975, c. 575, p. 1154, §§ 3, 4 with respect to income years beginning after Dec. 31, 1975, see Historical Note under § 10751.

Amendment of this section by Stats. 1978, 1st Ex.Sess., c. 1, § 15, eff. April 20, 1978, was repealed June 7, 1978 by Stats.1978, 1st Ex.Sess., c. 1, § 25. See Historical Note under Educ.C. § 41814.

Derivation: Stats.1929, c. 13, p. 19, § 3; Stats.1933, c. 303, p. 870, § 3.

Library References

Taxation ⇐126.

C.J.S. Taxation §§ 143, 144.

Notes of Decisions

1. Validity of related law

California Bank and Corporation Franchise Tax Act providing corporate franchise tax but changing total allowable offset permitted by Constitution to 75 per cent. tax and allowing offset of 10 per cent. for real property taxes was not unconstitutional as denying equal protection of laws. Barnsdall Oil Co. of California v. Merriam (D.C.1934) 8 F.Supp. 185.

California Bank and Corporation Franchise Tax Act providing corporate franchise tax but changing total allowable offset permitted by Constitution to 75 per cent. tax allowing offset of 10 per cent. for real property taxes held not unconstitutional as taking of property without due process, or as not within legislative power to charge offsets. Id.

2. In general

Where provision of corporate franchise tax law permitting corporation which had appealed to state board of equalization to test validity of tax by paying it under protest and suing for its recovery was repealed, corporation which had appealed to board could maintain suit in federal court to restrain enforcement of tax as means of testing its validity. Barnsdall Oil Co. of Cal. v. Merriam (D.C.1934) 8 F.Supp. 185.

Imposition of tax on items of preference income of banks did not conflict with constitutional and statutory intent that tax on bank be according to or measured by net income; thus bank's constitutional rights were not violated by taxing portion of bad debt reserves exceeding actual bad debt losses and accelerated depreciation. First City Bank v. Franchise Tax Bd. (1977) 139 Cal.Rptr. 12, 70 C.A.3d 444.

Safe deposit boxes which were not physically attached to building by any means and were readily removable within vault room and from one branch bank to another and which were not constructively annexed to building or vault room were personal property exempt from local taxation and were not fixtures which could be taxed as real property. U. S. Nat. Bank of San Diego v. Los Angeles County (1965) 44 Cal.Rptr. 280, 234 C.A.2d 195.

The excess franchise tax imposed on national banks is in lieu of any tax on personal property. Bank of America National Trust and Savings Association v. County of Los Angeles (1964) 36 Cal.Rptr. 413.

Legislative intent was to equalize tax burdens of banks, financial corporations and non-financial corporations, and word "licenses", as used in this section providing that franchise tax imposed upon banks should be in lieu of all other taxes and licenses, was substantially equivalent in meaning to words "license fees" as used in § 23184, permitting financial corporations to offset license fees against franchise tax. Citrus Belt Sav. & Loan Ass'n v. California Franchise Tax Bd. (1963) 32 Cal.Rptr. 579, 218 C.A.2d 584.

Under this section, state and national banks are entitled to register motor vehicles without the payment of the regular registration and license fees required by the California Codes if the vehicles are owned by the banks but when a bank leases a motor vehicle, even from a wholly owned leasing corporation, the banks are not exempt from payment of the regular registration and license fees. 55 Ops. Atty.Gen. 20, 1-18-72.

Where, inter alia, nonstock corporation formed by member banks to act as clearinghouse for bank credit card transactions operated on a cost basis so that any increase in operating costs, including taxes, was passed on to members and where, due to unity of interest and ownership of members, corporate existence was a legal fiction, local taxes imposed on corporation would be borne not by corporation but by member banks and, therefore, imposition of local gross receipts and payroll taxes on corporation violated Const. Art. 13, § 27, § 23181 and this section which bar imposition of local taxes on banks. Id.

3. Purpose

California's "in lieu" tax scheme was designed not to promote the banking business but primarily to make possible state taxation of national banks. Western States Bankcard Ass'n v. City and County of San Francisco (1977) 137 Cal.Rptr. 183, 561 P.2d 273, 19 C.3d 208.

4. Suspension of franchise

Under provision in corporate franchise tax law suspending corporation's right to do intrastate business where it did not pay franchise tax within 11 months after due date, 11 months' period began to run 10 days from notice and demand from franchise tax commissioner after tax deficiency became final. Barnsdall Oil Co. of California v. Merriam (D.C.1934) 8 F. Supp. 185.

Provision in corporate franchise tax law that corporation failing to pay delinquent franchise tax would forfeit right to do intrastate business was applicable on failure of corporation to pay deficiency in tax assessed by franchise tax commissioner. Id.

5. Taxation of national banks

Tax rate parity between national and state banking institutions is a prerequisite for any tax upon national banks. Western States Bankcard Ass'n v. City and County of San Francisco (1977) 137 Cal. Rptr. 183, 561 P.2d 273, 19 C.3d 208.

Provision of Public Law 91-156 (12 U.S.C.A. § 548) cancelling congressional authorization respecting taxes on national banks on date of enactment was not applicable to California vehicle taxes on national banks where § 23181 and this section, enacted prior to date of enactment, expressly provided that annual tax imposed by state upon "every bank * * * according to or measured by its net income" was "in lieu of all other taxes * * * upon the said banks except taxes upon their real property." Thomas v. Department of Motor Vehicles (1976) 131 Cal.Rptr. 164, 59 C.A.3d 731.

Provision of Public Law (12 U.S.C.A. § 548 note) deferring congressional authorization to tax national banks until January 1, 1973 was applicable to California vehicle taxes on national banks where taxes were imposed on banks prior to date of enactment and, therefore, were not authorized by affirmative action of the legislature until after the enactment. Id.

6. Local taxes

Direct local taxes on California banks are clearly prohibited. Western States Bankcard Ass'n v. City and County of San Francisco (1977) 137 Cal.Rptr. 183, 561 F.2d 273, 19 C.3d 208.

Incidence of municipal gross receipts and payroll expense taxes fell upon an independent entity, viz., nonprofit, nonstock corporation formed by member banks to act as clearinghouse for bank credit transactions, not upon its member banks, and the relationship between the corporation and its members was not such as to justify disregarding its corporate status for tax purposes, notwithstanding its arguments that nonprofit organizations performing traditional banking functions exclusively for banks may themselves obtain "in lieu" tax treatment even though they are not banks, and that imposition of the subject taxes would result, by reason of corporation's peculiarly close connection with its members, in local taxation of member banks themselves. Id.

7. Sales tax

Under § 6051, incidence of sales tax was on retailer for state law purposes, and thus purchaser banks had no claim to state "in lieu" tax exemption on sales made to them. U. S. v. State Bd. of Equalization (D.C.1978) 450 F.Supp. 1030.

§ 23183. Financial corporations; franchise tax on net income

An annual tax is hereby imposed upon every financial corporation doing business within the limits of this state and taxable under the provisions of Section 27 of Article XIII of the Constitution of this state, for the privilege of exercising its corporate franchises within this state, according to or measured by its net income, upon the basis of its net income for the next preceding income year at the rate provided under Section 23186.

(Added by Stats.1949, c. 557, p. 964, § 1. Amended by Stats.1971, c. 1304, p. 2561, § 3, eff. Oct. 29, 1971; Stats.1972, c. 773, p. 1386, § 3; Stats.1974, c. 311, p. 622, § 74; Stats.1977, c. 552, § 5, eff. Sept. 3, 1977.)

Historical Note

The 1971 amendment added subds. (b) and (c).

Application of Stats.1971, c. 1304, p. 2567, to the computation of taxes after Dec. 31, 1972, see Historical Note under § 23151.1.

The 1972 amendment substituted "before January 1, 1973 but dissolves or withdraws on such date or" for "in a taxable year ending before January 1, 1972, but dissolved or withdrew" and "dissolution or withdrawal takes place" for "corporation dissolves or withdraws" in introductory paragraph of subd. (c).

Operative effect of Stats.1972, c. 1406, see Historical Note under § 23151.

The 1974 amendment substituted "Section 27" for "Section 16" in subd. (a).

1974 amendment, operative upon adoption of A.C.A. No. 32, 1974, was approved by the electorate at the general election held Nov. 5, 1974. See, Historical Note under § 108.

The 1977 amendment deleted the subdivision designation from the first paragraph and deleted former subds. (b) and

(c) which as last amended in 1972, had read:

"(b) Notwithstanding subdivision (a), after December 31, 1971, the tax for the taxable year in which the financial corporation commences to do business within this state, whether or not for 12 full months, shall be the minimum tax prescribed in Section 23184. Further, with respect to taxable years beginning after December 31, 1972, the tax for the taxable year during which the financial corporation ceases doing business, dissolves or withdraws shall be:

"(1) According to or measured by its net income for the next preceding income year, at the rate prescribed in Section 23186, plus

"(2) According to or measured by its net income for the taxable year of cessation of doing business, dissolution or withdrawal, at the rate provided under Section 23186, or

"(3) The minimum tax prescribed in Section 23181, whichever tax is the greater.

"If the financial corporation commences to do business and dissolves or withdraws in the same taxable year, the tax for such taxable year shall be according to or measured by its net income for such year, at the rate provided under Section 23186, or the minimum tax provided in Section 23184, whichever tax is the greater.

"(c) In the case of a financial corporation which ceased doing business before January 1, 1973 but dissolves or withdraws on such date or thereafter, the tax for the taxable year during which the dissolution or withdrawal takes place shall be:

"(1) According to or measured by its net income for the income year next preceding the taxable year in which it ceased doing business, plus

"(2) According to or measured by its net income for the taxable year during which the financial corporation ceased doing business, at the rate provided under Section 23186."

Derivation: Stats.1929, c. 13, p. 20, § 4; Stats.1933, c. 210, p. 693, § 1; Stats.1933, c. 303, p. 870, § 4; Stats.1935, c. 275, p. 900, § 2; Stats.1935, c. 353, p. 1246, § 2; Stats.1937, c. 836, p. 2324, § 1; Stats.1939, c. 1050, p. 2934, § 1.5; Stats.1941, c. 698, p. 2211, § 1; Stats.1943, c. 352, p. 1403, § 1; Stats.1943, c. 984, p. 2897, § 1; Stats.1945, c. 946, p. 1779, § 1; Stats.1947, c. 1317, p. 2857, § 1; Stats. 1949, c. 513, p. 871, § 2.

Cross References

Computation of tax on financial corporation on dissolution or withdrawal, offset, see § 23332.5.
Credit unions, see Financial Code § 14000 et seq.
Pawnbrokers, see Financial Code § 21000 et seq.
Personal property brokers, see Financial Code § 22000 et seq.
Savings and loan associations, see Financial Code § 5000 et seq.
Small loans, see Financial Code § 24000 et seq.
Tax on preference income, application of this section, see § 23400.

Law Review Commentaries

Changes in the bank and corporation franchise tax act. (1934) 23 C.L.R. 51.

National bank taxation in California. Roger J. Traynor (1929) 17 C.L.R. 81, 232, 456.

Property tax offsets with respect to recent changes in the franchise tax act. (1933) 21 C.L.R. 543.

Public purpose in taxation. (1930) 18 C.L.R. 137; (1930) 18 C.L.R. 241.

State taxation and the Supreme Court. (1939) 28 C.L.R. 1.

What are financial corporations within the bank and corporation franchise tax. (1934) 22 C.L.R. 499.

Library References

Taxation ⇐126.

C.J.S. Taxation §§ 143, 144.

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Notes of Decisions

1. Validity

Bank and Corporation Franchise Tax Act was not unconstitutional in so far as it purports to authorize tax upon corporation upon basis of its net income for next preceding fiscal or calendar year, since

constitutional provision that taxes shall become lien on first Monday in March of 1929 and of each year thereafter contemplates tax to be levied and collected in 1929, which would only be possible if net income of previous year was used as its basis. Spring Valley Co. v. Johnson (1935) 46 P.2d 294, 7 C.A.2d 258.

Stats.1929, c. 13, p. 19, requiring inclusion of interest from nontaxable securities in net income base by which state franchise tax of bank or corporation is measured was not unconstitutional as impairing obligation of contract. Pacific Co. v. Johnson, (1931) 298 P. 489, 212 C. 148.

2. In general

California Bank and Corporation Franchise Tax Act does not impose on national banks tax rate higher than permitted by federal statute [12 U.S.C.A. § 548], and does not tax personalty in violation of the federal statute. Security-First National Bank of Los Angeles v. Franchise Tax Board (1961) 11 Cal.Rptr. 289, 359 P.2d 625, 57 C.2d 407, appeal dismissed, certiorari denied 82 S.Ct. 15, 368 U.S. 3, 7 L.Ed.2d 16.

Federal savings and loan association was not free from state franchise taxes because it did not hold a franchise from the state. First Federal Savings & Loan Ass'n of Altadena v. Johnson (1942) 122 P.2d 84, 49 C.A.2d 465.

Tax on privilege of exercising corporate franchise was tax on right of corporation to do business, familiarly known as "excise" or "license" tax. City Investments v. Johnson (1936) 56 P.2d 939, 6 C.2d 150.

Stipulated facts supported finding that investment company's indebtedness for government securities was created to evade taxation of credits. Whiting Finance Co. v. Hopkins (1931) 2 P.2d 461, 115 C.A. 756.

Assessor's refusal to allow investment company credit for debts incurred by purchase of government securities to evade tax on credits will be sustained by court. Id.

Whether or not a corporation was engaged in the transaction of a savings and loan business is not, for the purpose of taxation, conclusively determined by its articles of incorporation. City of Los Angeles v. State Loan & Trust Co. (1895) 42 P. 149, 109 C. 396.

1947 Amendment to the Bank and Corporation Franchise Tax Act limiting payment of interest on overpayment of tax to cases where overpayment is fault of commissioner prevents payment of interest to taxpayer whose overpayment was made prior to effective date of statute through taxpayer's mistake. 15 Ops.Atty.Gen. 144.

3. Purpose of law

The classification "financial corporations" in Bank and Corporation Franchise Tax Act, was made for purpose of complying with federal statute (12 U.S.C.A. § 548) prohibiting tax discrimination between national banks and financial corporations and term was used in same sense as in federal statute. Crown Finance Corporation v. McColgan (1943) 144 P.2d 331, 23 C.2d 280.

The manifest purpose of legislature in establishing classification of financial corporations which were made subject to bank and corporation franchise tax was to avoid tax discrimination against national banks, denounced by federal statute (12 U.S.C.A. § 548). H. A. S. Loan Service v. McColgan (1943) 133 P.2d 391, 21 C.2d 518, 145 A.L.R. 349.

4. Financial corporations

In ascertaining whether company is "financial corporation," question to be considered is whether or not activities of corporations involved dealing in money or financing in competition with those activities of national banks, and that competition with national banks may exist even though terms and conditions of business transactions are not identical. Marble Mortg. Co. v. Franchise Tax Bd. (1966) 50 Cal.Rptr. 345, 241 C.A.2d 26.

Corporation engaged in dealing in first deeds of trust on realty initially acquired in corporation's name through use of funds supplied to it by banks that were thereafter assigned to institutional investors could not avoid taxation at bank rate rather than general corporation rate on theory that loans were made only to support its servicing business, which major share of gross income came from activities prior to assignment and where service charge was in fact share of interest exactly like that retained by national bank for servicing loans. Id.

Fees for making and servicing construction loans, "point" charges for making federally insured loans and other preassignment earnings of corporation engaged in purchase and assignment of first deeds of trust were charges for lending "moneyed capital" rather than for rendering service to institutional assignees. Id.

Classification "financial corporation" in Bank and Corporation Franchise Tax Act was intended to comply with federal statute (12 U.S.C.A. § 548) prohibiting discrimination in taxation between national banks and other financial corporations and refers to corporation dealing in "other moneyed capital" as that term is used in federal statute. Id.

Even if consistent administrative policy or practice to tax corporations dealing in purchase and assignment of first deeds of trust at general corporation rate rather than at bank rate were shown, practice would not be binding since question was one of law previously undecided. Id.

That banks which furnished lines of credit to corporation engaged in purchase and assignment of first deeds of trust looked to credit of corporation rather than credit of assignees was evidence that corporation was not merely agent of assignees. Id.

A corporation is not a "financial corporation" within Bank and Corporation Franchise Tax Act, unless it is in substantial competition with business of national banks. Crown Finance Corp. v. McColgan (1943) 144 P.2d 331, 23 C.2d 280.

The facts that national banks, unlike other corporations transacting business of purchasing conditional sales contracts from retail dealers, look only to dealers' credit, insist on recourse to dealers, and require reserves, are not controlling in determining whether such other corporations compete with national banks and hence are "financial corporations" subject to franchise taxes at rate levied on such banks. Id.

Where loan service corporation negotiated small loans for borrowers from finance company, for which a fee was charged, and guaranteed payment of loans, and evidence authorized finding that corporate device was used as means of thwarting usury and franchise tax laws, and that the two corporate entities were engaged in single business, and were in competition with national banks in small loan field, loan service, corporation was a "financial corporation" within franchise tax law and within federal statute prohibiting tax discrimination by state against national banks. H. A. S. Loan Service v. McColgan (1943) 133 P.2d 391, 21 C.2d 518, 145 A.L.R. 349.

In view of state statute, Stats.1929, p. 19, authorizing the taxing of all banks, including national banking associations, located within the state, and all financial, mercantile, manufacturing and business corporations, levy of franchise taxes against a federal savings and loan association was not void because the state failed to take advantage of the authorization conferred by the federal savings and loan association act to tax such association's franchise and income by thereafter enacting a statute to that effect, since the association was a "financial corporation" within the statute. First Federal Savings & Loan Ass'n of Altadena v. Johnson (1942) 122 P.2d 84, 49 C.A.2d 465.

The words "financial corporation" as used in the federal statute (12 U.S.C.A. § 548) forbidding a state to impose a higher tax on national banks than other "financial corporations," and adopted into the state franchise tax act, designate and include moneyed corporations performing some of the functions of a national bank, the quoted term meaning a corporation dealing in money as distinguished from other commodities. Morris Plan Co. of San Francisco v. Johnson (1940) 100 P.2d 493, 37 C.A.2d 021.

5. Net income

California franchise tax is a tax upon corporation for privilege of exercising franchise within state and is measured by net income. Woodland Production Credit Ass'n v. Franchise Tax Bd. (1964) 37 Cal.Rptr. 231, 225 C.A.2d 293.

Tax on national banks under California Banks and Corporation Franchise Tax Act is tax measured by net income rather than by gross income. Security-First National Bank of Los Angeles v. Franchise Tax Board (1961) 359 P.2d 625.

The term "net income" was used in the Bank and Corporation Franchise Tax Act to specify the sum constituting the basis for calculation of the franchise tax and is not a fund available for dividends or the "measure of the tax" which is all income, and to measure the tax, all allowable deductions are taken, and any dividends paid from net income derived thereby are, as having been paid out of "income included in the measure of the tax", exempt from franchise tax in the hands of the recipient corporation. Burton E. Green Inv. Co. v. McColgan (1943) 140 P.2d 451, 60 C.A.2d 224.

6. Particular corporations

Corporation engaged in purchase and assignment of first deeds of trust could not avoid taxation at bank rate rather than general corporation rate on theory that "service fees" received for servicing loans of institutional assignees was not same type of income as interest earned by national banks on first deeds of trust where one segment of interest received by banks constituted compensation for performance of functions similar to those performed by corporation, i. e., acquisition of mortgage including necessary appraisals

Note 6

and collection of payments on loan. Marble Mortgage Co. v. Franchise Tax Bd. (1966) 50 Cal.Rptr. 345, 241 C.A.2d 26.

A Morris Plan Company, which was incorporated under the industrial loan law and which was in substantial competition with national banks in the locality, was a "financial corporation" within the meaning of the federal statute forbidding a state from imposing a higher tax on national banks than on other "financial corporations." Morris Plan Co. of San Francisco v. Johnson (1940) 100 P.2d 493, 37 C.A. 2d 621.

§ 23183.1. Financial corporations; determination of franchise tax

Notwithstanding Section 23183, every financial corporation doing business within the limits of this state and not exempted from taxation by the Constitution of this state or by this part, shall annually pay to the state for the privilege of exercising its corporate franchises within this state, a tax determined as follows:

(a) With respect to financial corporations, other than those described in subdivision (b), which commence doing business within the state after December 31, 1971, the tax for the taxable year of commencement, whether or not for 12 full months, shall be the minimum tax prescribed in Section 23184.

(b) If after December 31, 1972, a financial corporation commences to do business and ceases doing business in the same taxable year, the tax for such taxable year shall be according to or measured by its net income for such year, at the rate provided under Section 23186.

(c) With respect to taxable years beginning after December 31, 1972, other than the year of commencement described in subdivisions (a) and (b) or the year of cessation described in subdivision (d), a tax according to or measured by its net income, to be computed at the rate prescribed in Section 23186 upon the basis of its net income for the next preceding income year.

(d) With respect to financial corporations, which cease doing business in a taxable year ending after December 31, 1972, other than those described in subdivision (b), the tax for the taxable year of cessation shall be:

(1) According to or measured by its net income for the next preceding income year to be computed at the rate prescribed in Section 23186, plus

(2) According to or measured by its net income for the income year during which the financial corporation ceased doing business, to be computed at the rate prescribed in Section 23186.

(e) In any event, the tax for any taxable year shall not be less than the minimum tax provided for in Section 23184 for such taxable year.

(Added by Stats.1977, c. 552, § 6, eff. Sept. 3, 1977.)

Cross References

Computation of tax on financial, corporation on dissolution or withdrawal, offset, see § 23332.5.
Credit for taxes collected under wrong subdivision, see § 23188.
Taxable year of commencement of business, see § 23224.5.
Tax on preference income, application of this section, see § 23400.

Library References

Taxation ⇐117 et seq. C.J.S. Taxation § 134 et seq.

§ 23183.2. Financial corporations; tax for year of dissolution or withdrawal

Notwithstanding Section 23183, every financial corporation not exempted from taxation by the provisions of the Constitution of this state or by this part which dissolves or withdraws, shall pay a tax for its taxable year of dissolution or withdrawal according to or measured by its net income for the income year in which it ceased doing business, to be computed at the rate prescribed in Section 23186 for its taxable year of dissolution or withdrawal, unless such income has previously been included in the measure of tax for any taxable year. In any event, the tax for the taxable year of its dissolution or withdrawal shall not be less than the minimum tax provided for in Section 23184 for such taxable year.

(Added by Stats.1977, c. 552, § 7, eff. Sept. 3, 1977.)

Cross References

Computation of tax on financial, corporation on dissolution or withdrawal, offset, see § 23332.5.
Tax on preference income, application of this section, see § 23400.

§ 23184. Financial corporations; offset

(a) Financial corporations may offset against the franchise tax the amounts paid during the income year to this state or to any county, city, town, or other political subdivisions of the state as personal property taxes, or as license fees or excise taxes for the following privileges:

(1) Operating as personal property brokers or brokers as defined in the Personal Property Brokers Law provided for in Division 9 (commencing with Section 22000) of the Financial Code.

(2) Engaging in the business of loaning money, advancing credit, or loaning credit or arranging for the loan of money or advancing of credit or loaning of credit.

(3) Storing, using or otherwise consuming in this state of tangible personal property by savings and loan associations.

(b) The offset allowed to any financial corporation for any income year as provided in this section may, at the election of that financial corporation, be offset, in whole or in part, against its franchise tax for that income year or offset in whole or in part against its franchise tax in one or more of the next four succeeding years of its selection, until such time as the total amount of such offset is so utilized; provided, however, that for such purposes, offsets elected to be utilized against the franchise tax of a succeeding year shall be applied in the order of their respective years of origin and prior to the application of the offset which might otherwise be allowable for amounts paid during that income year.

(c) Notwithstanding anything to the contrary contained in this section, the tax on financial corporations after the allowance of all offsets provided for herein shall not be less than 7.6 percent of its net income for the preceding income year nor less than the following minimum tax:

(1) In the case of financial corporations, other than credit unions whose gross income is twenty thousand dollars ($20,000) or less, one hundred dollars ($100).

(2) In the case of credit unions whose gross income is twenty thousand dollars ($20,000) or less, twenty-five dollars ($25).

(d) For purposes of this section, with respect to calendar or fiscal years ending after June 30, 1973, the tax on financial corporations after the allowance of all offsets shall not be less than 9 percent of its net income nor less than the minimum tax as provided by subdivision (c).

(e) For income years beginning after December 31, 1971, the one hundred dollars ($100) specified in paragraph (1) of subdivision (c) shall be two hundred dollars ($200) instead of one hundred dollars ($100).

(Added by Stats.1972, c. 1406, p. 2980, § 28, eff. Dec. 26, 1972. Amended by Stats.1975, c. 575, p. 1154, § 4, eff. Sept. 6, 1975.)

Historical Note

Application of Stats.1972, c. 1406, to computation of taxes for income years ending after June 30, 1973, see Historical Note under § 23151.

The 1975 amendment deleted subd. (a)(2) which had read: "Operating motor vehicles under Part 5 (commencing with Section 10701) of this division or Article 2 (commencing with Section 9250) of Chapter 6 of Division 3 of the Vehicle Code, except for Section 9265."; and relettered (a)(3) and (a)(4) as (a)(2) and (a)(3), respectively.

Application of amendment by Stats.1975, c. 575, p. 1154, §§ 3, 4 with respect to income years beginning after Dec. 31, 1975, see Historical Note under § 10751.

Amendment of this section by Stats. 1978, 1st Ex.Sess., c. 1, § 10, eff. April 20, 1978, was repealed June 7, 1978 by Stats.1978, 1st Ex.Sess., c. 1, § 25. See Historical Note under Educ.C. § 41814.

Derivation: Former § 23184, added by Stats.1949, c. 557, p. 965, § 1, amended by Stats.1951, c. 374, p. 1169, § 4; Stats. 1957, c. 748, p. 1964, § 1; Stats.1959, c. 1127, p. 3213, § 3; Stats.1960, c. 1, p. 3, § 2; Stats.1967, c. 963, p. 2510, § 105; Stats.1967, c. 1709, p. 4270, § 1; Stats. 1969, c. 1461, p. 2980, § 1; Stats.1971, Ex.Sess., c. 1, p. 5049, § 212; repealed by Stats.1972, c. 1406, p. 2980, § 27.5.

Former § 23184, as originally enacted read as follows:

"Financial corporations may offset against said franchise tax the amount of personal property taxes and license fees paid during the income year to this State or to any county, city and county, city, town, or other political subdivision of the State the following:

"(a) For the privilege of operating as personal property brokers or brokers as defined in the Personal Property Brokers Act.

"(b) For the privilege of operating motor vehicles under Part 5 of this division.

"(c) For the privilege of engaging in the business of loaning money, advancing credit, or loaning credit or arranging for the loan of money or advancing of credit or loaning of credit.

"The said tax on financial corporations after the allowance of offset shall not be less than 4 percent of its net income for the preceding income year nor less than the minimum tax of twenty-five dollars ($25)."

The 1951 amendment rewrote the introductory paragraph except as it was changed in 1957.

The 1951 amendment also deleted from the beginning of subpars. (a), (b), and (c) the words "For the privilege of", in the last paragraph, the amendment referred to the "tax", instead of the "said tax".

For provisions of the 1951 act relating to effective date, operative date and application, see Historical Note under § 23004.

The 1957 amendment authorized, in the introductory paragraph, the offset of excise taxes, and added subpar. (d) to the first paragraph.

Application of provisions effecting changes in the computation of taxes for all income years ending after Dec. 31, 1958, see Historical Note under § 23151.

The 1959 amendment, in the third paragraph, substituted "5.5 percent" for "4 percent" and "one hundred dollars ($100)" for "twenty-five dollars ($25)".

The 1960 amendment added the word "following" preceding "minimum tax" in the introductory portion of the third paragraph, deleted the words "of one hundred dollars ($100)" following "minimum tax" and added subpars. (1) and (2).

Minimum tax on credit unions having income year ending on or before effective date of Stats.1960, c. 1, p. 3, see Historical Note under § 23153.

The 1967 amendments added a reference to Article 2 of Chapter 6 of Division 3 of the Vehicle Code in subpar. (b) of the first paragraph, and, in the third paragraph, substituted "7 percent" for "5.5 percent".

For additional sections of Stats.1967, c. 963, relating to the purpose of the act, to the transfer of funds to replace loss of local revenues, to capital expenditures, and to the time when various provisions become operative, see Historical Note under § 6051.

Section 6 of Stats.1967, c. 1709, p. 4272, provided:

"The provisions of this act affecting the computation of taxes shall be applied to income years beginning on or after January 1, 1967, and ending after the effective date of this act. The remaining provisions shall be applied on and after the effective date of this act."

The 1969 amendment substituted "Law" for "Act" in subpar. (a) of the first paragraph, and added the words "provided for in Division 9 (commencing with Section 22000) of the Financial Code"; rewrote the reference to Article 2 of Chapter 6 of Division 3 of the Vehicle Code; inserted the second paragraph; added the introductory clause at the beginning of the third paragraph, and substituted the words "all offsets provided for herein" for "offset".

The 1971 amendment changed paragraph designations and specified rates and amounts for income years beginning after Dec. 31, 1971.

See Derivation under § 23183.

Cross References

Application to estimated tax, see § 25502.
Computation of tax on financial corporation on dissolution or withdrawal, offset, see § 23332.5.
Due date, banks and financial corporations, see § 25553.
Personal property brokers, license fees, see Financial Code § 22202.
Small loan license fees, see Financial Code § 24202.
Tax for year of dissolution or withdrawal, see § 23183.2.

Law Review Commentaries

Background and effect of 1959 amendment (1959) 34 S.Bar J. 760.

Effect upon validity of Bank and Corporation Franchise Tax Act of provision allowing banks an offset of a percentage of taxes paid on their real property. (1929) 17 C.L.R. 456, 500.

Property tax offsets, changes in the franchise tax act. (1933) 21 C.L.R. 543.

Library References

Taxation ⇐117.

C.J.S. Taxation § 134.

Notes of Decisions

I. In general

Sums paid by savings and loan association pursuant to Fin.C. §§ 5300, 5301, to meet salaries and expenses incurred in regulation of such licensed associations did not constitute "license fees" for purposes of this section permitting offset against franchise tax. Citrus Belt Sav. & Loan Ass'n v. California Franchise Tax Bd. (1963) 32 Cal.Rptr. 579, 218 C.A.2d 584.

Tax on privilege of exercising corporate franchise was tax on right of corporation to do business, familiarly known as "excise" or "license" tax. City Investments v. Johnson (1936) 56 P.2d 939, 6 C.2d 150.

§ 23185. Financial corporations; evidence in support of offset

At the time of payment of the tax, each taxpayer claiming an offset against the tax, pursuant to Section 23184, shall submit to the Franchise Tax Board evidence in such form as it shall prescribe in support of said claims.

(Added by Stats.1949, c. 557, p. 965, § 1. Amended by Stats.1951, c. 71, p. 267, § 1; Stats.1963, 1st Ex.Sess., c. 2, p. 5002, § 1, operative Jan. 1, 1965.)

Historical Note

The 1951 amendment substituted "Franchise Tax Board" for "commissioner".

The 1963 amendment substituted the word "tax" for the words "first installment of tax under the provisions of Article 3 of Chapter 10."

Stats.1963, 1st Ex.Sess., c. 2, p. 5009, § 28, provided:

"The provisions of this act, except as may otherwise be specifically provided, shall become operative on January 1, 1965, with respect to the computation of taxes on or measured by the net income of the calendar year 1965 or on the first day of the fiscal year with respect to the computation of taxes on or measured by the net income of fiscal years beginning after January 1, 1965."

Intent and purpose of Stats.1963, 1st Ex.Sess. c. 2, regarding elimination of installment payments and provision for payments on estimated tax, see Historical Note under § 25441.

Derivation: Stats.1929, c. 13, p. 30, § 26; Stats.1931, c. 65, p. 68, § 6; Stats.1933, c. 210, p. 700, § 9; Stats.1933, c. 303, p. 876, § 8; Stats.1935, c. 275, p. 977, § 19; Stats.1937, c. 836, p. 2342, § 12.

§ 23185a. Financial corporations; rate applied to offset; addition to tax

If a financial corporation, in paying the tax provided for in this chapter, desires to claim an offset in the computation of its tax, the

rate provided in Section 23186 for financial corporations shall be applied to the offset and the amount so computed shall be added to and included in the tax of the financial corporation.

(Added by Stats.1949, c. 557, p. 965, § 1.)

Historical Note

Derivation: See Derivation under § 23185.

§ 23185b. Financial corporations; effect of refund on offset allowed; payment; reports; due date; application of delinquency provisions

If the taxes described in Section 23184 are at any time refunded to any taxpayer, and said taxpayer has been allowed an offset under Section 23184 for such taxes against any tax imposed under this chapter, said taxpayer shall pay a tax not subject to offset in an amount equivalent to any offset which has been allowed against any tax at any time imposed under this chapter on account of such refunded taxes. Said taxpayer shall report such taxes in its return for the income year in which the same are refunded. The tax herein provided for shall be due and payable in one amount on or before the due date, or the due date as extended by the Franchise Tax Board, for filing the return. The provisions of this part relating to delinquent first installment taxes shall be applicable to such tax if it is not paid on or before its due date.

(Added by Stats.1949, c. 557, p. 965, § 1. Amended by Stats.1951, c. 71, p. 267, § 1; Stats.1951, c. 73, p. 319, § 2.)

Historical Note

The 1951 amendments, in the first sentence, stated that if "the" taxes "described in Section 23184" are at any time refunded to any taxpayer, etc.; following the reference to "any taxpayer", they deleted the words "under this chapter"; and in the third sentence the amendments substituted "Franchise Tax Board" for "commissioner".

Derivation: See Derivation under § 23185.

§ 23186. Rate of tax; maximum

The rate of tax on banks and financial corporations shall be a percentage equal to the percentage of the total amount of net income, allocable to this state, of every corporation taxable under Section 23151 or subdivision (c) of Section 23151.1 or paragraph (1) of subdivision (d) of Section 23151.1, as the case may be, other than public utilities as defined in the Public Utilities Act, for the next preceding calendar year or fiscal years ended during such calendar year, required to be paid to this state as franchise taxes according to or mea-

sured by such net income, and required to be paid to this state or its political subdivisions by such corporations as personal property taxes during the preceding calendar year or fiscal years ended in such calendar year; provided, however, that said rate of tax shall not exceed 13 percent. The percentage of the net income of every corporation taxable under Section 23151, or subdivision (c) of Section 23151.1, or paragraph (1) of subdivision (d) of Section 23151.1, as the case may be, other than public utilities as defined in the Public Utilities Act, required to be paid to this state or its political subdivisions in personal property taxes shall be determined by ascertaining the ratio which the total amount of such personal property taxes, less 9 percent thereof, bears to the total amount of net income of such corporations allocable to California, increased by the amount of such personal property taxes; provided, however, that if any such corporation sustains a net loss allocable to California the personal property taxes required to be paid by such corporation to this state or its political subdivisions during the preceding calendar year or fiscal years ended during such calendar year shall be considered for the purpose of determining such ratio only to the extent which such personal property taxes exceed such net loss allocable to California.

(Added by Stats.1972, c. 1406, p. 2981, § 29, eff. Dec. 26, 1972. Amended by Stats.1973, c. 208, p. 567, § 58, eff. July 11, 1973; Stats.1977, c. 552, § 8, eff. Sept. 3, 1977.)

Historical Note

Application of Stats.1972, c. 1406, to computation of taxes for income years ending after June 30, 1973, see Historical Note under § 23151.

The 1973 amendment inserted, in the first and second sentences of subd. (a), the words "or subdivision (b) of Section 23151.1 or paragraph (1) of either subdivision (c) or (e) of Section 23151.1, as the case may be".

The 1977 amendment deleted the subdivision "(a)" designation at the beginning of the section; substituted, for the two 1973 insertions in the first two sentences, the words "or subdivision (c) of Section 23151.1 or paragraph (1) of subdivision (d) of Section 23151.1 as the case may be"; increased the rates in the first and second sentences, respectively, from "11.6" and "7.6" to "13" and "9" percent; and deleted subd. (b) which had read:

"(b) For calendar or fiscal years ending after June 30, 1973, the 11.6 percent provided in the first sentence of subdivision (a) shall be 13 percent and the 7.6 percent provided in the second sentence shall be 9 percent."

Amendment of this section by Stats. 1978, 1st Ex.Sess., c. 1, § 17, eff. April, 20, 1978, was repealed June 7, 1978 by Stats.1978, 1st Ex.Sess., c. 1, § 25. See Historical Note under Educ.C. § 41814.

Derivation: Former § 23186, added by Stats.1949, c. 557, p. 965, § 1, amended by Stats.1951, c. 72, p. 305, § 3; Stats.1953, c. 134, p. 881, § 3; Stats.1959, c. 1127, p. 3213, § 4; Stats.1967, c. 963, p. 2511, § 106; Stats.1971, Ex.Sess., c. 1, p. 5050, § 213; Stats.1971, Ex.Sess., c. 2, p. 5163, § 37; Stats.1972, c. 1237, p. 2404, § 15, repealed by Stats.1972, c. 1406, p. 2981, § 28.5.

The 1951 amendment, in the provision relating to the ratio which the total amount of personal property taxes bears to the total amount of net income, following the words "personal property taxes", substituted "less 4 percent" for "less 3.4 percent".

For additional provisions of the 1951 act relating to effective dates and application, see Historical Note under § 23102.

The 1953 amendment, in the second sentence, referred to the ratio of personal property taxes to net income of such "corporations", instead of "corporation", allocable to California.

For provisions of the 1953 act relating to effective dates, see Historical Note under § 23038.

The 1959 amendment, in the first sentence, increased the maximum rate of tax from "8 percent" to "9.5 percent", and, in the second sentence, in the provision relating to the ratio which the total amount of personal property taxes bears to the total amount of net income, following the words "personal property taxes", substituted "less 5.5 percent" for "less 4 percent".

Application of provisions effecting changes in the computation of taxes for all income years ending after Dec. 31, 1958, see Historical Note under § 23151.

The 1967 amendment increased the percentages covered by the 1959 amendment from "9.5 percent" to "11 percent" and from "5.5 percent" to "7 percent".

For additional sections of Stats.1967, c. 963, relating to the purpose of the act, to the transfer of funds to replace loss of local revenues, to capital expenditures, and to the time when various provisions become operative, see Historical Note under § 6051.

The 1971 amendments substituted, respectively, in the first and second sentences, "11.6" and "7.6" for "11" and "7" percent; and added subdivision designations.

Application of amendment by Stats.1971, Ex.Sess., c. 2, to bank and corporation tax law, see Historical Note under § 23036.

The 1972 amendment inserted, in the second sentence of subd. (a), the words "or subdivision (b) of Section 23151.1".

Stats.1929, c. 13, p. 19, § 4a; added Stats.1933, c. 303, p. 871, § 5; amended Stats.1935, c. 275, p. 961, § 3; Stats.1935, c. 353, p. 1247, § 3; Stats.1943, c. 37, p. 173, § 1; Stats.1943, c. 352, p. 1404, § 1.-1; Stats.1945, c. 1300, p. 2450, § 1; Stats.1945, c. 1515, p. 2839, § 1; Stats. 1949, c. 1542, p. 2736, § 1.

Cross References

Banks, imposition of tax, see § 23181.
Due date, see § 25553.
Financial corporations, imposition of tax, see §§ 23183 to 23183.2.
Public Utilities Act, see Public Utilities Code § 201 et seq.

Law Review Commentaries

Background and effect of 1959 amendment (1959) 34 S.Bar J. 760.

Library References

Taxation ⟨⟩302. C.J.S. Taxation §§ 361, 362.

Notes of Decisions

In general 2
Validity 1

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1. Validity

Use of personal property taxes and net incomes of nonfinancial corporations in computation of taxes imposed by California on national banks under California Bank and Corporation Franchise Tax Act does not result in deprivation of due process or equal protection. Security-First Nat. Bank of Los Angeles v. Franchise Tax Bd. (1961) 11 Cal.Rptr. 289, 359 P. 2d 625, 55 C.2d 407, appeal dismissed, certiorari denied 82 S.Ct. 15, 368 U.S. 3, 7 L.Ed.2d 16.

California Bank and Corporation Franchise Tax Act does not impose on national banks tax rate higher than permitted by federal statute and does not tax personalty of national banks in violation of federal statute. Id.

2. In general

Cumulative effect of taxes levied on banks does not result in tax in excess of maximum rate of 11.6% prescribed by former § 23186. First City Bank v. Franchise Tax Bd. (1977) 139 Cal.Rptr. 12, 70 C.A.3d 444.

Amount of personal property taxes of nonfinancial corporations to be considered by franchise tax commissioner in setting bank tax rate of national banks in amount required to be paid by nonfinancial corporations rather than amount which assessors properly should have required nonfi-

nancial corporations to pay. Security First Nat. Bank of Los Angeles v. Franchise Tax Bd. (1961) 11 Cal.Rptr. 289, 359 P.2d 625, 55 C.2d 407, appeal dismissed, certiorari denied 82 S.Ct. 15, 368 U.S. 3, 7 L.Ed.2d 16.

Tax on national banks under California Bank and Corporation Franchise Tax Act is tax measured by net income rather than by gross income. Id.

§ 23186a. Rate of tax; determination of average percentage of net income, hearing, notice; availability of data

The Franchise Tax Board, after public hearing and opportunity given to examine the data on which its determination is based, shall determine not later than the 31st day of December of each year the average percentage of net income above specified, and, within 30 days after its determination, shall mail notice of its determination and the amount of tax payable or refundable, as the case may be, on the basis of such determination to all banks and financial corporations affected thereby, which are then classified on its records as banks or financial corporations. If additional tax is payable such determination shall be treated as a notice and demand for payment but shall not be considered a deficiency assessment within the meaning of Article 1 of Chapter 20.[1] The data gathered by the Franchise Tax Board in determining the rate, referred to herein, shall be made available to the taxpayers affected by such determination at the time and in the manner prescribed by regulations adopted by the Franchise Tax Board.

(Added by Stats.1949, c. 557, p. 966, § 1. Amended by Stats.1951, c. 71, p. 267, § 1; Stats.1955, c. 938, p. 1573, § 9, eff. June 6, 1955; Stats.1963, 1st Ex.Sess., c. 2, p. 5002, § 2; Stats.1965, c. 641, p. 1986, § 2, eff. June 12, 1965.)

[1] Section 25661 et seq.

Historical Note

The 1951 amendment substituted "Franchise Tax Board" for "commissioner."

The 1955 amendment, at the end of the first [now second] sentence, referred to "Chapter 20", instead of to "Chapter 11".

For additional provisions of the 1955 act, see Historical Note under § 23051.

The 1963 amendment, in the first sentence, inserted, following the word "payable", the words "or refundable, as the case may be".

Section 29 of Stats.1963, 1st Ex.Sess., c. 2, p. 5009, provided:

"Notwithstanding any other provision of this act, the amendments made by this act to Section 23186a of the Revenue and Taxation Code, and added Section 25553.5 of said code, shall become operative on February 1, 1964."

Intent and purpose of Stats.1963, 1st Ex.Sess., c. 2, regarding elimination of installment payments and provision for payments on estimated tax, see Historical Note under § 25441.

The 1965 amendment rewrote the final clause of the first sentence into the present second sentence. The clause originally read: "but such determination shall not be considered a deficiency assessment within the meaning of Article 1 of Chapter 20."

Derivation: See Derivation under § 23186.

Cross References

Basis for estimated tax, see § 25562.
Due date, see § 25553.
Due date after notice mailed pursuant to this section, see § 25553.5.
Estimated tax, tax shown on return, see § 25954.

Library References

Taxation ⇐302.
C.J.S. Taxation §§ 361, 362.

Background and general effect of 1965 amendment. Rev. of 1965 Code Leg. (Cont.Educ. of Bar, 1965) page 246.

Notes of Decisions

In general 2
Validity 1

1. Validity

Use of personal property taxes and net incomes of nonfinancial corporations in computation of taxes imposed by California on national banks under California Bank and Corporation Franchise Tax Act does not result in deprivation of due process or equal protection. Security-First Nat. Bank of Los Angeles v. Franchise Tax Bd. (1961) 11 Cal.Rptr. 289, 359 P.2d 625, 55 C.2d 407, appeal dismissed, certiorari denied 82 S.Ct. 15, 368 U.S. 3, 7 L.Ed.2d 16.

California Bank and Corporation Franchise Tax Act does not impose on national banks tax rate higher than permitted by federal statute and does not tax personalty of national banks in violation of federal statute. Id.

2. In general

Amount of personal property taxes of nonfinancial corporations to be considered by franchise tax commissioner in setting bank tax rate of national banks in amount required to be paid by nonfinancial corporations rather than amount which assessors properly should have required nonfinancial corporations to pay. Security First Nat. Bank of Los Angeles v. Franchise Tax Bd. (1961) 11 Cal.Rptr. 289, 359 P.2d 625, 55 C.2d 407, appeal dismissed, certiorari denied 82 S.Ct. 15, 368 U.S. 3, 7 L.Ed.2d 16.

Tax on national banks under California Bank and Corporation Franchise Tax Act is tax measured by net income rather than by gross income. Id.

§ 23186b. Rate of tax; judicial determination of excess; relief

If it be judicially determined that the rate of tax on any taxpayer is higher than is authorized by law such taxpayer shall be relieved of liability for any tax imposed by this part only to the extent of the excess beyond that legally authorized.

(Added by Stats.1949, c. 557, p. 966, § 1.)

Historical Note

Derivation: See Derivation under § 23186.

Notes of Decisions

In general 2
Validity 1

1. Validity

Use of personal property taxes and net incomes of nonfinancial corporations in computation of taxes imposed by California on national banks under California Bank and Corporation Franchise Tax Act does not result in deprivation of due process or equal protection. Security-First Nat. Bank of Los Angeles v. Franchise Tax Bd. (1961) 11 Cal.Rptr. 289, 359 P.2d 625, 55 C.2d 407, appeal dismissed, certiorari denied 82 S.Ct. 15, 368 U.S. 3, 7 L.Ed.2d 16.

California Bank and Corporation Franchise Tax Act does not impose on national banks tax rate higher than permitted by federal statute and does not tax personality of national banks in violation of federal statute. Id.

2. In general

Amount of personal property taxes of nonfinancial corporations to be considered by franchise tax commissioner in setting bank tax rate of national banks is amount required to be paid by nonfinancial corporations rather than amount which assessors properly should have required nonfinancial corporations to pay. Security First Nat. Bank of Los Angeles v. Franchise Tax Bd. (1961) 11 Cal.Rptr. 289, 359 P.2d 625, 55 C.2d 407, appeal dismissed, certiorari denied 82 S.Ct. 15, 368 U.S. 3, 7 L.Ed.2d 16.

Tax on national banks under California Bank and Corporation Franchise Tax Act is tax measured by net income rather than by gross income. Id.

§ 23187. Official receipt for real and personal property taxes paid

Upon the request of a taxpayer under this chapter, the tax-collecting officer of a county, city, or other political subdivision of this State, shall furnish an official receipt for real and personal property taxes paid to him setting forth a description of such property, the assessed valuation thereof, the rate of tax, the amount of taxes paid, and the beginning and ending of the year for which the taxes are paid.

(Added by Stats.1949, c. 557, p. 966, § 1.)

Historical Note

Derivation: Stats.1929, c. 13, p. 34, § 36.

Cross References

Tax receipt for real and personal property taxes, see § 2615.

§ 23188. Credit for taxes collected under wrong subdivision of §§ 23181 or 23183.1

In the event that taxes, interest and penalties have been or shall be assessed against, paid by or collected from a taxpayer under a subsection of Section 23181 or 23183.1, which assessment, payment or collection should have been made under a different subsection of such sections, such taxes, interest and penalties shall be considered as having been assessed, paid or collected under such different subsection as of the date or dates they were made.

(Added by Stats.1977, c. 552, § 9, eff. Sept. 3, 1977.)

Article 3.5

CREDIT FOR PREPAID TAX

Sec.
23201. Credit against tax for year of dissolution or withdrawal.
23202. Transferee in reorganization; credit of tax paid by prior transferors or by transferee as transferor.
23203. Submission of evidence of payment of tax to which credit claimed.
23204. Limitation on claim for credit.

Article 3.5 was added by Stats.1971, c. 1304, p. 2562, § 4, eff. Oct. 29, 1971.

§ 23201. Credit against tax for year of dissolution or withdrawal

(a) In the case of a taxpayer whose tax for the first taxable year was computed under Sections 23222 to 23224, inclusive (or corresponding sections of prior laws), there shall be allowed as a credit against the tax for the taxable year of dissolution or withdrawal, the excess of the tax paid over the minimum tax for the first taxable year which constituted a full 12 months of doing business in this state and whose income has been included in the measure of tax of a succeeding taxable year.

(b) Any credit previously allowed under this section or for a year in which the taxpayer ceased doing business shall not be allowed again in computing a credit under this section.

(Added by Stats.1971, c. 1304, p. 2562, § 4, eff. Oct. 29, 1971. Amended by Stats.1971, Ex.Sess., c. 1, p. 5061, § 213.1, eff. Dec. 8, 1971; Stats.1977, c. 552, § 10, eff. Sept. 3, 1977.)

Historical Note

The 1971 amendment substituted "Section 23151.1" for "subdivision (b) or (c) of Section 23151" in subd. (b).

Application of Stats.1971, c. 1304, p. 2559, to computation of taxes after Dec. 31, 1972, see Historical Note under § 23151.1.

Stats.1971, Ex.Sess., c. 1, p. 5181, § 317, governed the application of the increases in the bank and corporation tax rates to various fiscal years ending after Dec. 31, 1971. See Historical Note under § 23036.

The 1977 amendment rewrote that part of subd. (a) following "tax for the taxable year" which portion previously read: "of cessation of doing business, dissolution or withdrawal, an amount equal to the tax paid for the first taxable year which constituted a full 12 months of doing business in this state;" and it rewrote subd. (b) which, as amended in 1971, had read: "(b) In the case of a taxpayer whose tax for the first taxable year was computed under Section 23151.1 or subdivision (b) or (c) of Section 23183, there shall be allowed as a credit against the tax for the taxable year of cessation of doing business, dissolution or withdrawal, an amount equal to the minimum tax in effect for the first taxable year."

Cross References

Tax on preference income, application of this section, see § 23400.

Library References

Taxation ⇐364 et seq. C.J.S. Taxation § 421.

§ 23202. Transferee in reorganization; credit of tax paid by prior transferors or by transferee as transferor

(a) In the case of a taxpayer which has been a transferee in a reorganization to which Sections 23251 to 23254, inclusive (or corresponding sections of prior laws), were applicable, there shall be allowed as a credit for the taxable year of dissolution or withdrawal, the excess of the tax paid over the minimum tax paid by prior transferors or by the transferee as a transferor under Sections 23222 to 23224, inclusive (or corresponding sections of prior laws), for the first taxable year of the transferors which constituted a full 12 months of doing business and whose income has been included in the measure of tax of a succeeding taxable year.

(b) The credit allowable under this section shall be in addition to any credit which may be allowable to the taxpayer under Section 23201. However, any credit previously allowed under Section 2301 [1], this section or for a year in which the taxpayer or transferor ceased doing business, shall not be allowed again in computing a credit under this section.

(Added by Stats.1971, c. 1304, p. 2562, § 4, eff. Oct. 29, 1971. Amended by Stats.1971, Ex.Sess., c. 1, p. 5051, § 213.2, eff. Dec. 8, 1971; Stats.1977, c. 552, § 11, eff. Sept. 3, 1977.)

[1] So in printer's copy.

Historical Note

The 1971 amendment substituted "Section 23151.1" for "subdivision (b) or (c) of Section 23151" in subd. (a).

Application of Stats.1971, c. 1304, p. 2567, to computation of taxes after Dec. 31, 1972, see Historical Note under § 23151.1.

Stats.1971, Ex.Sess., c. 1, p. 5131, § 317, governed the application of the increases in the bank and corporation tax rates to various fiscal years ending after Dec. 31, 1971. See note under § 23036.

The 1977 amendment substituted, in subd. (a) following "allowed as a credit," the words "for the taxable year of dissolution or withdrawal, the excess of the tax paid over the minimum" for "against the tax imposed for the taxable year of cessation of doing business, dissolution or withdrawal, an amount equal to the amount by which any," and it substituted that portion of subd. (a) following "as a transferor" for:

"(1) Under Sections 23222 to 23224, inclusive (or corresponding sections of prior laws), for the first taxable year of the transferors which constituted a full 12 months of doing business, or (2) Under Section 23151.1 or subdivision (b) or (c) of Section 23183;" and it rewrote the last sentence of subd. (b) which had read: "However, any credit previously allowed or allowable under Section 23201 and this section shall not be allowed again in computing a credit under this section."

Cross References

Tax on preference income, application of this section, see § 23400.

Library References

Taxation ⇐364 et seq. C.J.S. Taxation § 421.

§ 23203. Submission of evidence of payment of tax to which credit claimed

The credits provided by Sections 23201 and 23202 shall be allowable only upon submission by the taxpayer of evidence establishing to the satisfaction of the Franchise Tax Board the amount of the tax paid pursuant to Sections 23222 to 23224, inclusive (or corresponding sections of prior laws), and with respect to which the credit is claimed.

(Added by Stats.1971, c. 1304, p. 2562, § 4, eff. Oct. 29, 1971.)

Historical Note

Application to computation of taxes after Dec. 31, 1972, see Historical Note under § 23151.1.

Cross References

Tax on preference income, application of this section, see § 23400.

Library References

Taxation ⇐364 et seq. C.J.S. Taxation § 421.

§ 23204. Limitation on claim for credit

(a) No credit under this article shall be allowed or made after four years from the last day prescribed for filing the return for the taxable year of dissolution or withdrawal, or within the periods prescribed under Article 1 of Chapter 22, whichever period expires the latest, unless before the expiration of such period a claim therefor is filed by the taxpayer.

(b) Notwithstanding the provisions of Section 23204(a), no credit under this article shall be allowed or made to a taxpayer which has been suspended for a period of four continuous years beginning on or after January 1, 1975.

(Added by Stats.1971, c. 1304, p. 2562, § 4, eff. Oct. 29, 1971. Amended by Stats.1977, c. 552, § 12, eff. Sept. 3, 1977.)

Historical Note

Application to computation of taxes after Dec. 31, 1972, see Historical Note under § 23151.1.

The 1977 amendment designated the original text as subd. (a) and added subd. (b).

Cross References

Tax on preference income, application of this section, see § 23400.

Library References

Taxation ⇐364 et seq. C.J.S. Taxation § 421.

Article 4

COMMENCING CORPORATIONS

Sec.

Article 4 was added by Stats.1949, c. 557, p. 966, § 1.

Application of former General Corporations Law to banks until Jan. 1, 1979, see note under Corp.C. § 114.

Cross References

Tax on preference income, application of this article, see § 23400.

Law Review Commentaries

California franchise tax as applied to commencing and dissolving corporations. Edward A. Weiss (1960) 12 Hast.L.J. 93.

Commencing corporations—Their franchise taxes. Bruce W. Walker and Hebard P. Smith (1960) 12 Hast.L.J. 14.

§ 23221. Prepayment of minimum; time

A corporation which incorporates under the laws of this state or qualifies to transact intrastate business in this state shall thereupon prepay the minimum tax provided in Section 23153, except that any credit union shall thereupon prepay a tax of twenty-five dollars ($25). The prepayment shall be made to the Secretary of State with the filing of the articles of incorporation or the statement and designation by foreign corporation. The Secretary of State shall transmit

the amount of the prepayment to the Franchise Tax Board. The Franchise Tax Board shall certify to the Secretary of State on an individual or class basis those domestic or foreign corporations which are exempt from prepayment or for which prepayment to the Secretary of State is waived.

(Added by Stats.1949, c. 557, p. 966, § 1. Amended by Stats.1960, c. 1, p. 4, § 2.5, eff. April 12, 1960; Stats.1977, c. 235, § 27.)

Historical Note

The 1960 amendment added the exception relating to credit unions at the end of the first sentence.

Minimum tax on credit unions having income year ending on or before effective date of Stats.1960, c. 1, p. 3, see Historical Note under § 23153.

The 1977 amendment rewrote the first two sentences which had read:

"A corporation which incorporates or organizes under the laws of this State or qualifies to do business in this State shall thereupon prepay the minimum tax provided in Section 23153, except that any credit union shall thereupon prepay a tax of twenty-five dollars ($25). The prepayment shall be made before the corporation files with the Secretary of State its articles of incorporation or a duly certified copy thereof."; and added the third and fourth sentences.

Derivation: Stats.1929, c. 13, p. 25, § 13; Stats.1929, c. 781, p. 1555, § 1; Stats.1931, c. 65, p. 65, § 3; Stats.1933, c. 210, p. 696, § 5; Stats.1933, c. 303, p. 872, § 6; Stats.1935, c. 275, p. 967, § 9; Stats.1937, c. 836, p. 2331, § 6; Stats. 1939, c. 1050, p. 2946, § 7; Stats.1943, c. 37, p. 185, § 6; Stats.1943, c. 352, p. 1430, § 9; Stats.1945, c. 946, p. 1800, § 7; Stats.1947, c. 830, p. 1979, § 2; Stats.1949, c. 513, p. 888, § 7.

Cross References

Deficiency assessments, see § 25671.
Tax on preference income, inapplicability of this section, see § 23400.

Law Review Commentaries

California franchise tax as applied to commencing and dissolving corporations. Edward A. Weiss (1960) 12 Hast.L.J. 93.

"Municipal inducements"—The New Mexico Commercial and Industrial Project Revenue Bond Act. Arthur O. Armstrong, Jr. (1960) 48 C.L.R. 58.

Library References

Taxation ⇐117. C.J.S. Taxation § 134.

Notes of Decisions

1. In general

Where Stats.1933, p. 869, § 13k, as amended, prohibiting refund of franchise taxes paid because of cessation of business or corporate existence pursuant to reorganization, consolidation, or merger before amendment defined reorganization as a mere change in identity, form, or place of organization, amendment including within definition distribution in liquidation of a corporation's business or property to a corporation stockholder was not a legislative declaration that something was added to definition but merely clarified definition. San Joaquin Ginning Co. v. McColgan (1942) 125 P.2d 36, 20 C.2d 254.

2. Liability for tax

Where subsidiary corporation effected a statutory dissolution and distributed its assets to its stockholders, and after liquidation and dissolution parent corporation continued to conduct subsidiary's business as theretofore conducted by subsidiary, there was a "reorganization" within Stats.1933, p. 869, § 13k, and subsidiary was not entitled to refund of a portion of

franchise taxes paid on ground that it had been dissolved. Great Western Power Co. of Cal. v. McColgan (1942) 125 P.2d 42, 20 C.2d 896.

3. Refunds

Under Stats.1933, p. 869, § 13k, as amended, prohibiting refund of franchise taxes paid where cessation of business or corporate existence is pursuant to reorganization, consolidation, or merger and defining reorganization as a mere change in identity, form, or place of organization, however effected, or a merger or consolidation, consolidation or merger as a form of reorganization is not restricted to statutory consolidation or merger in absence of appropriate language of limitation. San Joaquin Ginning Co. v. McColgan (1942) 125 P.2d 36, 20 C.2d 254.

Under Stats.1933, p. 869, § 13k, as amended, prohibiting refund of franchise taxes paid where cessation of business or corporate existence is pursuant to reorganization, consolidation, or merger, omission of express declaration that merger or consolidation should include transfer by one corporation to another of its voting stock or properties does not impel conclusion that the legislature intended to exclude elements of a de facto merger or consolidation from the meaning of reorganization. Id.

Under Stats.1933, p. 869, § 13k, as amended, prohibiting a refund of franchise taxes paid where cessation of business or corporate existence is pursuant to reorganization, consolidation, or merger, and defining reorganization as a mere change in identity, form, or place of organization, however effected, or a merger or consolidation, language is sufficiently broad to include as a "reorganization" any transaction which does not substantially change continuity of interest. Id.

Where subsidiary corporation filed required certificates of dissolution and on payment of all its debts transferred balance of its assets to parent corporation in return for stock which was thereupon canceled, and same interests were represented by same stockholders before and after transfer, there was a "reorganization" within statute, and subsidiary was not entitled to recover portion of franchise taxes paid on theory that it had been dissolved. Id.

Language of Stats.1933, p. 869, § 13k, as amended prohibiting refund of franchise taxes paid where cessation of business or corporate existence is pursuant to reorganization, consolidation, or merger and defining reorganization is language of "exemption", even though portion thereof partakes of the form of a taxing provision, and terms reorganization, merger, and consolidation in relation to exemptions, abatements, and refunds should be liberally construed. Id.

A corporation to be entitled to refund of portion of franchise taxes paid on theory that corporation had been dissolved was required to show that change effected by statutory dissolution and liquidation was in reality a change of substance, and if procedure adopted effected change only in form of corporate structure, there was only a "reorganization", "consolidation", or "merger" within Stats.1933, p. 869, § 13k, as amended, prohibiting refund. Id.

§ 23222. Tax for first year, adjustment, credit for prepayment of minimum tax; prepayment for second year, rate, credit return

(a) If a taxpayer commences to do business in this state during its first taxable year its tax for that year shall be adjusted upon the basis of the net income received during that taxable year, at the rate applicable to that year, a credit being allowed for the prepayment of the minimum tax. The return for the first taxable year, which shall be filed within 2 months and 15 days after the close of that year, shall also be the basis for the tax of said taxpayer for its second taxable year, if its first taxable year is a period of 12 months. In every case in which the first taxable year of a taxpayer constitutes a period of less than 12 months, or in which a taxpayer does business for a period of less than 12 months during its first taxable year, said taxpayer shall pay as a prepayment of the tax for its second taxable year a

tax based on the income for the first taxable year computed under the law and at the rate applicable to the second taxable year, the same to be due and payable at the same times and in the same manner as if that amount were the entire amount of its tax for that year; and upon the filing of its tax return within 2 months and 15 days after the close of the second taxable year it shall pay a tax for said year, at the rate applicable to that year, based upon its net income received during that year, allowing a credit for the prepayment; but in no event, except as provided in Section 23332, shall the tax for the second taxable year be less than the amount of the prepayment for that year, and said return for its second taxable year shall also be the basis for the tax of said taxpayer for its third taxable year, if the second taxable year constitutes a period of 12 months.

(b) The provisions of subdivision (a) shall be applicable only if a taxpayer commenced doing business in this state before January 1, 1972.

(Added by Stats.1949, c. 557, p. 967, § 1. Amended by Stats.1951, c. 72, p. 306, § 4, eff. April 10, 1951; Stats.1951, c. 345, p. 792, § 4, eff. May 5, 1951; Stats.1971, c. 1304, p. 2563, § 5, eff. Oct. 29, 1971; Stats.1971, Ex.Sess., c. 1, p. 5052, § 213.3, eff. Dec. 8, 1971.)

Historical Note

The 1951 amendments, near the end of the section, in the provisions relating to the tax for the second taxable year, stated: but in no event, "except as provided in Section 23332", shall the tax for the second taxable year be less than the amount of the prepayment, etc. The amendments added at the end of the section the words "if the second taxable year constitutes a period of 12 months".

For additional provisions of Stats.1951, chapter 72, relating to effective dates and application, see Historical Note under § 23102.

Stats.1951, c. 345, also contained the following provisions:

"Sec. 11. This act shall become operative upon the taking effect of the Bank and Corporation Tax Law, enacted by Chapter 557, Statutes of 1949, as amended, or upon the effective date of this act, whichever is later.

"Sec. 12. The provisions of this act effecting changes in the computation of taxes shall be applied only in the computation of taxes, for the purpose of the taxes imposed under Chapter 2, of Part 11, Division 2 of the Revenue and Taxation Code, measured by income for income years beginning after December 31, 1950, and for the purpose of the tax imposed under Chapter 3, of Part 11, Division 2 of the Revenue and Taxation Code, for taxable years beginning after December 31, 1950, and the remaining provisions of this act shall become effective on the effective date of this act. Provisions effecting changes in the computation of taxes shall mean those affecting income, deductions, rates, method of calculating tax, exclusions, exemptions, and credits. Any amendment to any section of the Revenue and Taxation Code shall not, of itself, be taken as an indication that a change of meaning is intended."

The 1971 amendments inserted the subd. "(a)" designation and added subd. (b).

Stats.1971, Ex.Sess., c. 1, p. 5131, § 317, governed the application of the increases in the bank and corporation tax rates to various fiscal years ending after Dec. 31, 1971. See Historical Note under § 23036.

Application of Stats.1971, c. 1304, p. 2567, to the computation of taxes after Dec. 31, 1972, see Historical Note under § 23151.1.

Derivation: See Derivation under § 23221.

Cross References

Corporation revived after suspension, computation of amounts payable, see § 23282.
Credit against tax for year of dissolution or withdrawal, see § 23201.
Resumption of business, see §§ 23281, 23282.
Section inapplicable to reorganized corporation, see § 23252.
Tax on preference income, application of this section, see § 23400.

Notes of Decisions

1. In general

Imposition in August, 1931, of additional franchise tax for 1931 under amendment to franchise act effective February 27, 1931, changing method of computing franchise tax for second taxable year of new corporation, was proper as against contention that such imposition gave amendment unconstitutional retroactive effect, where tax was for privilege of engaging in business in 1931. Filoli, Inc., v. Johnson (1936) 51 P.2d 1093, 4 C.2d 662.

Amendment to franchise tax act changing method of computing tax for second taxable year of new corporation did not permit computation of tax for second year on basis of tax paid for first year, but required computation of tax on basis of net income for first taxable year. Id.

§ 23222a. Taxable year less than 12 months; measure; prepayment; dissolution or withdrawal from state; applicability of section

In every case in which the second or succeeding taxable years of a commencing taxpayer constitute a period of less than 12 months or in which the taxpayer does business for a period of less than 12 months during its second or succeeding taxable years, the tax for such year or years shall be measured by the income of that period or periods subject to the continuation of the prepayment procedure outlined in Section 23222. In no event shall the income of any period or periods herein described be used as the measure of the tax for the succeeding taxable year, other than the prepayment, until the last short period is succeeded by a taxable period of 12 months, in which case the income of the last short period shall, if greater than the income of the 12-month period, constitute the measure of the tax for such 12-month period.

Thereafter the procedure outlined in Section 23222, in respect of the second and third taxable years, shall apply and the taxpayer shall not be subject to the provisions of this section.

In the event that a taxpayer is dissolved or withdraws from this state while subject to the provisions of this section, its tax for the year of dissolution or withdrawal shall be measured by its net income for such year. However, in no event shall the tax be less than the minimum tax provided by Section 23153.

The provisions of this section shall be applicable only if a taxpayer commenced doing business in this state before January 1, 1972.

(Added by Stats.1951, c. 345, p. 791, § 1, eff. May 5, 1951. Amended by Stats.1957, c. 544, p. 1601, § 2; Stats.1959, c. 273, p. 2174, § 1; Stats.

1961, c. 499, p. 1597, § 1; Stats.1965, c. 641, p. 1986, § 3, eff. June 12, 1965; Stats.1971, c. 1304, p. 2563, § 6, eff. Oct. 29, 1971; Stats.1971, c. 1, p. 5052, § 213.4, eff. Dec. 8, 1971.)

Historical Note

For provisions of the 1951 act relating to effective date, operative date, and application, see Historical Note under § 23222.

The 1957 amendment added the words "and the taxpayer shall not be subject to the provisions of this section" at the end of the provisions now contained in the second paragraph, and added the provisions now contained in the third paragraph.

Stats.1957, c. 544, p. 1607, § 16, declared that the amendment of this section by § 2 was merely a clarification of the original legislative intention rather than a substantive change.

The 1959 amendment rewrote the second sentence of the first paragraph which originally read: "In no event shall the income of any period or periods herein described be used as the measure of the tax other than the prepayment for the following taxable year, until the income of the second or a succeeding taxable year constitutes a period of 12 months."

The 1961 amendment inserted the words "measure of" following "constitute" near the end of the second sentence of the first paragraph.

The 1965 amendment inserted the words "for the succeeding taxable year" in the second sentence.

The 1971 amendments added the last paragraph.

Stats.1971, Ex.Sess., c. 1, p. 5131, § 317, governed the application of the increases in the bank and corporation tax rates to various fiscal years ending after Dec. 31, 1971. See Historical Note under § 23036.

Application of Stats.1971, c. 1304, p. 2567, to the computation of taxes after Dec. 31, 1972, see Historical Note under § 23151.1.

Cross References

Resumption of business, see §§ 23281, 23282.
Section inapplicable to reorganized corporation, see § 23252.
Tax on preference income, application of this section, see § 23400.

Library References

Background and general effect of 1965 amendment. Rev. of 1965 Code Leg. (Cont.Educ. of Bar, 1965) page 246.

§ 23223. Business commenced in taxable year other than that of incorporation or qualification; adjustment; credit; applicability

(a) When any taxpayer commences to do business in this state for the first time in any taxable year other than the year of incorporation or qualification, its tax for that taxable year and for the succeeding taxable year shall be computed in accordance with the provisions of Section 23222 relative to first and second taxable years, a credit being allowed for any tax payable under Section 23153 for the year in which it commences to do business.

(b) The provisions of subdivision (a) shall be applicable only if a taxpayer commenced doing business in this state before January 1, 1972.

(Added by Stats.1949, c. 557, p. 967, § 1. Amended by Stats.1971, c. 1304, p. 2564, § 7, eff. Oct. 29, 1971; Stats.1971, Ex.Sess., c. 1, p. 5053, § 213.5, eff. Dec. 8, 1971.)

Historical Note

The 1971 amendments added subd. (b).

Application of Stats.1971, c. 1304, p. 2567, to the computation of taxes after Dec. 31, 1972, see Historical Note under § 23151.1.

Stats.1971, Ex.Sess., c. 1, p. 5131, § 317, governed the application of the increases in the bank and corporation tax rates to various fiscal years ending after Dec. 31, 1971. See Historical Note under § 23036.

Derivation: See Derivation under § 23221.

Cross References

Corporation revived after suspension, computation of amounts payable, see § 23282.
Credit against tax for year of dissolution or withdrawal, see § 23201.
Resumption of business, see §§ 23281, 23282.
Section inapplicable to reorganized corporation, see § 23252.
Tax on preference income, application of this section, see § 23400.

§ 23224. Corporations subject to income tax; computation of franchise tax; applicability

(a) Notwithstanding the provisions of Section 23222 and Section 23223, if a corporation, which has been subject to the provisions of Chapter 3 [1] commences to do business in this state, its tax shall be computed as follows:

(1) Such corporation shall pay a tax under Chapter 3 for the whole of the year it commences to do such business;

(2) Such corporation shall, for the taxable year succeeding the year it commences to do business in this state, pay a tax under this chapter measured by its income for that taxable year;

(3) Such corporation shall, for its third taxable year, pay a tax, under this chapter, measured by its income for its second taxable year;

(4) Notwithstanding any other provisions of this part, such corporation shall file its return for such second and third taxable years on or before the 15th day of the third month following the close of its second taxable year.

(b) The provisions of subdivision (a) shall be applicable only if a taxpayer commenced doing business in this state before January 1, 1972.

(Added by Stats.1949, c. 557, p. 967, § 1. Amended by Stats.1971, c. 1304, p. 2564, § 8, eff. Oct. 29, 1971; Stats.1971, Ex.Sess., c. 1, p. 5053, § 213.6, eff. Dec. 8, 1971.)

[1] Section 23501 et seq.

Historical Note

The 1971 amendments relettered and renumbered former provisions and added subd. (b).

Application of Stats.1971, c. 1304, p. 2567, to the computation of taxes after Dec. 31, 1972, see Historical Note under § 23151.1.

Stats.1971, Ex.Sess., c. 1, p. 5131, § 317, governed the application of the increases in the bank and corporation tax rates to various fiscal years ending after Dec. 31, 1971. See Historical Note under § 23036.

Derivation: See Derivation under § 23221.

Cross References

Corporation revived after suspension, computation of amounts payable, see § 23282.
Credit against tax for year of dissolution or withdrawal, see § 23201.
Resumption of business, see §§ 23281, 23282.
Section inapplicable to reorganized corporation, see § 23252.
Tax on preference income, application of this section, see § 23400.

§ 23224.5. Taxation of corporation subject to corporation income tax upon commencing business

(a) After December 31, 1971, if a corporation which has been subject to the provisions of Chapter 3 commences to do business in this state, such corporation shall pay a tax under Chapter 3 for the whole of the taxable year it commences to do such business.

(b) For the purposes of Sections 23151.1 and 23183.1, the first taxable year subsequent to the taxable year the corporation commences to do such business (as described in subdivision (a)) shall be treated as the taxable year of commencement.

(Added by Stats.1971, c. 1304, p. 2565, § 9, eff. Oct. 29, 1971. Amended by Stats.1971, Ex.Sess., c. 1, p. 5054, § 213.7, eff. Dec. 8, 1971; Stats.1971, Ex.Sess., c. 2, p. 5164, § 38, eff. Dec. 30, 1971; Stats.1977, c. 552, § 13, eff. Sept. 3, 1977.)

Historical Note

The 1971 amendments substituted "December 31, 1971" for "December 31, 1972" and "Section 23151.1" for "subdivision (b) of Section 23151".

Application of Stats.1971, c. 1304, p. 2567, to the computation of taxes after Dec. 31, 1972, see Historical Note under § 23151.1.

Purpose of 1971 Ex.Sess. technical correction act, see Historical Note under § 255.4.

Application of amendment by Stats.1971, Ex.Sess., c. 2, to bank and corporation tax law, see Historical Note under § 23036.

Stats.1971, Ex.Sess., c. 1, p. 5131, § 317, governed the application of the increases in the bank and corporation tax rates to various fiscal years ending after Dec. 31, 1971. See Historical Note under § 23036.

The 1977 amendment inserted designation subd. "(a)"; deleted, following "business" in subd. (a), the words "and for taxable years thereafter, such corporation shall be taxed in accordance with Section 23151.1".

Cross References

Tax on preference income, application of this section, see § 23400.

Library References

Taxation ⇐1015. C.J.S. Taxation § 1093.

§ 23225. Date due of adjusted tax

The adjusted tax, as provided in Sections 23222 to 23224.5, inclusive, for any taxable year in excess of the prepayment for that year, shall be due and payable as provided in Chapter 19.[1]

(Added by Stats.1949, c. 557, p. 968, § 1. Amended by Stats.1951, c. 71, p. 267, § 1; Stats.1955, c. 938, p. 1574, § 10, eff. June 6, 1955; Stats. 1963, 1st Ex.Sess., c. 2, p. 5002, § 3, operative Jan. 1, 1965; Stats.1977, c. 552, § 14, eff. Sept. 3, 1977.)

[1] Section 25401 et seq.

Historical Note

The 1951 amendment substituted "Franchise Tax Board" for "commissioner".

The 1955 amendment substituted references to "Chapter 19" and to "Chapter 21" for the former references to "Chapter 10" and to "Chapter 12".

For additional provisions of the 1955 act, see Historical Note under § 23051.

The 1963 amendment, following the words "due and payable", substituted the words "as provided in Chapter 19" for the words "in one amount on or before the fifteenth day of the third month following the close of that taxable year, or on or before the expiration of the period of extension where an extension has been granted by the Franchise Tax Board under Article 1 of Chapter 19, and, if not so paid, interest shall be added thereto in the manner and at the rate or rates provided in Article 1 of Chapter 21."

Operative effect of Stats.1963, 1st Ex. Sess., c. 2, p. 5002, see Historical Note under § 23185.

Intent and purpose of Stats.1963, 1st Ex.Sess., c. 2, regarding elimination of installment payments and provision for payments on estimated tax, see Historical Note under § 25441.

The 1977 amendment substituted "23224.5" for "23224."

Derivation: See Derivation under § 23221.

Cross References

Payments, due date, see § 25551 et seq.
Section inapplicable to reorganized corporation, see § 23252.

§ 23226. Income reported on deferred basis; distribution or apportionment of income and deductions

In the case of the taxpayer taxable in the manner provided in Sections 23222 to 23224.5, inclusive, reporting income from any source on a deferred basis, the Franchise Tax Board is authorized to distribute or apportion such income, or deductions applicable thereto, if it determines that such distribution or apportionment is necessary in order to prevent avoidance of taxes or clearly to reflect the income of the taxpayer.

(Added by Stats.1949, c. 557, p. 968, § 1. Amended by Stats.1951, c. 71, p. 267, § 1; Stats.1977, c. 552, § 15, eff. Sept. 3, 1977.)

Historical Note

The 1951 amendment substituted "Franchise Tax Board" for "commissioner".

The 1977 amendment substituted "23224.5" for "23224."

Derivation: See Derivation under § 23221.

Article 5

REORGANIZED CORPORATIONS

Sec.

Article 5 was added by Stats.1949, c. 557, p. 968, § 1.

Cross References

Credit on dissolution or withdrawal for excess over minimum tax for first taxable year, see § 23202.
Tax on preference income, application of this article, see § 23400.

§ 23251. Reorganization; control

The term "reorganization" as used in this chapter means (a) a transfer by a bank or corporation of all or a substantial portion of its business or property to another bank or corporation if immediately after the transfer the transferor or its stockholders or both are in control of the bank or corporation to which the assets are transferred; or (b) a mere change in identity, form or place of organization however effected; or (c) a merger or consolidation; or (d) a distribution in liquidation (other than a distribution to which Section 24504(b)(2) applies) by a bank or corporation of all or a substantional portion of its business or property to a bank or corporation stockholder, and the bank or corporation stockholder continues all or a substantial portion of the business of the liquidated bank or corporation. As used in this section the term "control" means the ownership of at least 80 percent of the voting stock and at least 80 percent of the total number of shares of all other classes of stock of the bank or corporation.

(Added by Stats.1949, c. 557, p. 968, § 1. Amended by Stats.1951, c. 72, p. 306, § 5, eff. April 10, 1951; Stats.1953, c. 134, p. 882, § 4, eff. April 8, 1953; Stats.1957, c. 544, p. 1602, § 3, eff. May 30, 1957.)

Historical Note

The 1951 amendment, in the first sentence, substituted letters for numbers in the divisions of the sentence, and it added at the end of the sentence the words, "and the bank or corporation stockholder continues all or a substantial portion of the business of the liquidated bank or corporation". Near the beginning of the second sentence, the amendment substituted "section" for "paragraph".

For provisions of the 1951 act relating to effective dates and application, see Historical Note under § 23102.

The 1953 amendment, in the first sentence, substituted "chapter" for "article".

For provisions of the 1953 act relating to effective dates, see Historical Note under § 23038.

The 1957 amendment inserted the parenthetical clause in subd. (d) of the first sentence.

Derivation: See Derivation under § 23221.

Cross References

Bank reorganization, see Financial Code § 3200 et seq.
Deficiency assessments, see § 25671.
Merger or consolidation,
Banks, see Financial Code § 2070 et seq.
Corporations, see Corporations Code § 1100 et seq.
Credit unions, see Financial Code § 15500 et seq.
Savings and loan associations, see Financial Code § 9200 et seq.
Sale of business or property,
Bank, see Financial Code § 2650 et seq.
Corporations, see Corporations Code § 1000 et seq.
Savings and loan associations, reorganization, see Financial Code § 9500 et seq.

Law Review Commentaries

Corporate reorganizations, tax planning and the excess profits tax of 1950. (1951) 39 C.L.R. 331.

Library References

Taxation ⇐114.
C.J.S. Taxation §§ 127, 156, 261. Words and Phrases (Perm.Ed.)

United States Code Annotated

Federal income tax provisions, see 26 U.S.C.A. § 368.

Notes of Decisions

1. In general

Transaction whereby acquiring corporation exchanged portion of its stock for all outstanding stock of acquired corporation giving former stockholders in acquired corporation 14 percent stock ownership in acquiring corporation, and then dissolved acquired corporation, was a "merger" within this section, so that acquired corporation was not entitled to refund of taxes paid. Heating Equipment Mfg. Co. v. Franchise Tax Bd. (1964) 39 Cal.Rptr. 453, 228 C.A.2d 290.

Where Pennsylvania subsidiary of parent Delaware corporation transferred all of its California business and property to another subsidiary doing business in California, transaction constituted "reorganization" within this section, and net income earned in year of transfer by transferor attributable to transferred assets, was properly included in measuring transferee's franchise taxes for succeeding year. Bethlehem Pacific Coast Steel Corp. v. Franchise Tax Bd. (1962) 21 Cal.Rptr. 707, 203 C.A.2d 458.

Where Stats.1933, p. 869, § 13k, as amended, prohibiting refund of franchise taxes paid because of cessation of business or corporate existence pursuant to reorganization, consolidation, or merger before amendment defined reorganization as a mere change in identity, form, or place of organization, amendment included within definition distribution in liquidation of a corporation's business or property to a corporation stockholder was not a legislative declaration that something was added to definition but merely clarified definition. San Joaquin Ginning Co. v. McColgan (1942) 125 P.2d 36, 20 C.2d 254.

§ 23252. Provisions relating to certain commencing corporations inapplicable

Sections 23222 to 23225, inclusive, do not apply to a bank or a corporation which commences to do business in this State, pursuant to a reorganization of a bank or corporation as defined in Section 23251.

(Added by Stats.1949, c. 557, p. 968, § 1.)

Historical Note

Derivation: See Derivation under § 23221.

§ 23253. Business or property transferred to another taxpayer; transferor's income taxed to transferee; return where tax years differ; party to the reorganization

Where, pursuant to a reorganization, all or a substantial portion of the business or property of a taxpayer, a party to the reorganization, is transferred to another taxpayer, a party to the reorganization:

(a) The net gain of the transferor from the business or property so transferred to any taxpayer for the taxable year in which the transfer occurs, shall be included in the measure of the tax on the transferee for the taxable year succeeding the taxable year in which the transfer occurs if the taxable year of the transferee in which the transfer occurs ends at the same time as or before the time the taxable year of the transferor in which the transfer occurs ends. Gain of the transferor so included in the measure of the tax on the transferee shall be considered the income of the transferee for the purposes of Chapter 2.[1]

(b) If the taxable year of the transferee in which the transfer occurs ends after the taxable year of the transferor in which the transfer occurs ends, the transferee shall, within two months and 15 days after the close of the taxable year of the transferor in which the transfer occurs, file a return disclosing the net income of the transferor from the business or property transferred for the taxable year in which the transfer occurs, and pay a tax measured by such income.

(c) For the purposes of this section "party to the reorganization" includes any taxpayer subject to the tax imposed under this

part who acquires and continues to operate all or a substantial part of the operating assets of the original transferor, regardless of whether such assets are received directly from the original transferor, or by merger, or as otherwise described in Section 23251.

(Added by Stats.1949, c. 557, p. 968, § 1. Amended by Stats.1951, c. 217, p. 469, § 1, eff. May 3, 1951; Stats.1965, c. 641, p. 1987, § 4, eff. June 12, 1965.)

[1] Section 23101 et seq.

Historical Note

The 1951 amendment, in the introductory provision, in two instances, substituted "taxpayer" for "bank or corporation". The amendment, in designating subdivisions, substituted letters for numbers. In subdivision (a), in the first sentence, the amendment substituted "taxpayer" for "bank or corporation", and in the second sentence substituted "Chapter 2" for "this act". The amendment added subdivision (c).

The 1951 act also contained the following provisions:

"Sec. 2. This act inasmuch as it provides for a tax levy for the usual current expenses of the State, shall, under the provisions of Section 1 of Article IV of the Constitution, take effect immediately.

"Sec. 3. This act shall become operative upon the taking effect of the Bank and Corporation Tax Law, enacted by Chapter 557, Statutes of 1949, as amended, or upon the effective date of this act, whichever is later.

"Sec. 4. The provisions of this act effecting changes in the computation of taxes shall be applied only in the computation of taxes, for the purpose of the taxes imposed under Chapter 2, of Part 11, Division 2 of the Revenue and Taxation Code, measured by income for income years beginning after December 31, 1950, and for the purpose of the tax imposed under Chapter 3, of Part 11, Division 2 of the Revenue and Taxation Code, for taxable years, beginning after December 31, 1951, and the remaining provisions of this act shall become effective on the effective date of this act. Provisions effecting changes in the computation of taxes shall mean those affecting income, deductions, rates, method of calculating tax, exclusions, exemptions, and credits. Any amendment to any section of the Revenue and Taxation Code shall not, of itself, be taken as an indication that a change of meaning is intended."

The 1965 amendment substituted the word "gain" for "income" in subdivision (a).

Derivation: See Derivation under § 23221.

Law Review Commentaries

Some tax dangers in transferring property to a corporation. (1953) 39 A.B.A.J. 157.

Library References

Taxation ⇐381.
C.J.S. Taxation § 446.
Words and Phrases (Perm.Ed.)

Background and general effect of 1965 amendment. Rev. of 1965 Code Leg. (Cont.Educ. of Bar, 1965) page 246.

Notes of Decisions

1. Construction and application

Under constitutional provision of Art. 13, § 14½ (repealed; see, now, Art. 13, § 28) imposing gross premiums tax upon insurers in lieu of all other taxes, except for provision that trust business of title insurer is taxable to same extent and manner as trust companies and trust departments of banks, title insurer which liquidated subsidiaries, which engaged in activities unrelated to title insurer's trust operation and which had been liable for franchise tax, and transferred subsidiaries' business assets to itself and continued operation of all business and operating assets of each subsidiary was not "a party to reorganization" within this section requiring net gain of transferor to any such taxpayer to be included in measure of franchise tax on transferee for following year, and title insurer was not required to calculate its corporate franchise tax for year following transfer by including income of the transferred corporations for previous year. First Am. Title Ins. & Trust Co. v. Franchise Tax Bd. (1971) 93 Cal.Rptr. 177, 15 C.A.3d 343.

Phrase "business or property" as used in provision of this section that where, pursuant to reorganization, all or substantial portion of "business or property" of corporation, a party to reorganization, is transferred to another corporation, which is also party to reorganization, net income of transferor from business or property transferred should be included in measuring franchise tax on transferee for succeeding taxable year, is limited to California business or property. Bethlehem Pac. Coast Steel Corp. v. Franchise Tax Bd. (1962) 21 Cal.Rptr. 707, 203 C.A.2d 458.

§ 23253a. Business or property transferred to another taxpayer; return and tax where transferor not subject to tax

If, at the time of any of the transfers referred to in Section 23253, the transferor has not become subject to a tax measured by its income for the taxable year preceding the taxable year in which the transfer occurs, the transferee shall within two months and fifteen days after the close of the month in which the transfer occurs file a return disclosing the net income of the transferor for such preceding year and pay a tax measured by such income.

(Added by Stats.1949, c. 557, p. 969, § 1.)

Historical Note

Derivation: See Derivation under § 23221.

§ 23253b. Tax rate

Whenever under this article the transferee is required to pay a tax measured by the income of the transferor, the rate of tax applicable to the transferee shall apply.

(Added by Stats.1949, c. 557, p. 969, § 1.)

Historical Note

Derivation: See Derivation under § 23221.

§ 23253c. Offsets available to transferee

The transferee shall, pursuant to the provisions of Article 3 of this chapter, [1] be entitled to the same offset against any tax imposed on it measured by the income of the transferor for taxes on the business or property transferred as would have been allowed the transferor had the reorganization not occurred.

(Added by Stats.1949, c. 557, p. 969, § 1.)

[1] Section 23181 et seq.

Historical Note

Derivation: See Derivation under § 23221.

§ 23254. Tax on transferor; exclusion of income included in computation of tax on transferee

Where income of the transferor is required to be included in the computation of a tax on the transferee, such income shall not thereafter be included in the measure of a tax on the transferor.

(Added by Stats.1949, c. 557, p. 969, § 1.)

Historical Note

Derivation: See Derivation under § 23221.

Article 6

CORPORATIONS RESUMING BUSINESS

Sec.

Article 6 was added by Stats.1949, c. 557, p. 969, § 1.

Cross References

Tax on preference income, application of this article, see § 23400.

§ 23281. Computation of tax; credit for minimum tax paid; due dates; delinquency provisions; exclusion of corporations subject to income tax

(a) When a taxpayer ceases to do business within the state during any taxable year and does not dissolve or withdraw from the state during that year, and does not resume doing business during the succeeding taxable year, its tax for the taxable year in which it resumes doing business shall be the greater of—(1) the tax computed upon the basis of the net income of the income year in which it ceased doing business, except where such income has already been included in the measure of a tax imposed by this chapter, or (2) the minimum tax prescribed in Section 23153.

(b) Such tax shall be due and payable at the time the corporation resumes doing business, or on or before the 15th day of the third month following the close of its income year, whichever is later. All the provisions of this part relating to delinquent taxes shall be applicable to such tax if it is not paid on or before its due date.

(c) This section is not applicable to a corporation which became subject to the provisions of Chapter 3 after it discontinued doing business in this state; see Section 23224.5.

(Added by Stats.1949, c. 557, p. 969, § 1. Amended by Stats.1963, 1st Ex. Sess., c. 2, p. 5002, § 4, operative Jan. 1, 1965; Stats.1977, c. 552, § 16, eff. Sept. 3, 1977.)

Historical Note

The 1963 amendment eliminated a provision authorizing payment in two installments.

Intent and purpose of Stats.1963, 1st Ex.Sess., c. 2, regarding elimination of installment payments and provision for payments on estimated tax, see Historical Note under § 25441.

Operative effect of Stats.1963, 1st Ex. Sess., c. 2, p. 5002, see Historical Note under § 23185.

The 1977 amendment divided the section into lettered subdivisions; in subd. (a), substituted "taxpayer ceases to do business" for "corporation discontinues doing business", inserted "taxable" following "tax for the", following "shall be" inserted "the greater of—(1) the tax", following "net income" substituted "of the income year" for "for the year", substituted "ceased" for "discontinued", and substituted "or (2) the minimum tax prescribed in" for "a credit being allowed for any tax payable under"; and designated the former last paragraph as subd. (c) and at the end of the section substituted section "23224.5" for "23224".

Derivation: See Derivation under § 23221.

Cross References

Deficiency assessments, see § 25671.

Library References

Taxation ⇐376(1). C.J.S. Taxation §§ 445, 453.

§ 23282. Revivor after suspension or forfeiture; computation of tax; prepayment to obtain certificate of revivor; tax after December 31, 1972

(a) The tax imposed upon any taxpayer which has suffered the suspension or forfeiture provided in Section 23301, and which revives in any taxable year other than the taxable year in which suspension or forfeiture occurred, shall be computed in the same manner as provided in Sections 23222 to 23224, inclusive, relative to the computation of taxes upon taxpayers commencing to do business for the first time after incorporation or qualification. In addition to the taxes, penalties, and interest specified in Section 23305, such taxpayer shall prepay a tax in an amount equal to the minimum tax provided for in

Section 23153 as a condition precedent to the issuance of a certificate of revivor.

(b) After December 31, 1971, the tax imposed upon any taxpayer which has suffered the suspension or forfeiture provided in Section 23301, and which revives in any taxable year other than the taxable year in which suspension or forfeiture occurred, shall be—

(1) In the case of a taxpayer which was doing business in the year next preceding the year in which revivor took place, computed upon the basis of the net income for that next preceding income year,

(2) In the case of a taxpayer which resumed doing business in the year of revivor, computed upon the basis of the net income for the year in which it ceased doing business, unless such income is or has otherwise been subject to tax,

(3) In the case of a taxpayer which first commences to do business in the year of revivor, the minimum tax provided in Section 23153,

(4) In no event less than the minimum tax provided in Section 23153.

In addition to the taxes, penalties, and interest specified in Section 23305, such taxpayer shall prepay the minimum tax imposed by this subdivision as a condition precedent to the issuance of a certificate of revivor.

(Added by Stats.1949, c. 557, p. 970, § 1. Amended by Stats.1965, c. 641, p. 1987, § 5, eff. June 12, 1965; Stats.1971, c. 1304, p. 2565, § 10, eff. Oct. 29, 1971; Stats.1971, Ex.Sess., c. 1, p. 5054, § 213.8, eff. Dec. 8, 1971; Stats.1971, Ex.Sess., c. 2, p. 5164, § 39, eff. Dec. 30, 1971; Stats.1977, c. 552, § 17, eff. Sept. 3, 1977.)

Historical Note

The 1965 amendment deleted the clause "but did not transact business during the period of such suspension or forfeiture" preceding the words "shall be computed".

The 1971 amendments added subd. (b).

Application of Stats.1971, c. 1304, p. 2567, to the computation of taxes after Dec. 31, 1972, see Historical Note under § 23151.1.

Purpose of 1971 Ex.Sess. technical correction act, see Historical Note under § 255.1.

Stats.1971, Ex.Sess., c. 1, p. 5131, § 317, governed the application of the increases in the bank and corporation tax rates to various fiscal years ending after Dec. 31, 1971. See Historical Note under § 23036.

Application of amendments by Stats. 1971, Ex.Sess., c. 2, to bank and corporation tax law, see Historical Note under § 23030.

The 1977 amendment rewrote subd. (b) which previously had read:

"(b) After December 31, 1971, the tax imposed upon any taxpayer which has suffered the suspension or forfeiture provided in Section 23301, and which revives in any taxable year other than the taxable year in which suspension or forfeiture occurred, shall be computed in the same manner as provided in subdivision (a) of Section 23151.1, or subdivision (b) of Section 23183, relative to the computation of taxes upon taxpayers commencing to do business for the first time after incorporation or qualification. In addition to the taxes, penalties, and interest specified in Section 23305, such taxpayer shall prepay the minimum tax imposed by this subdivision as a condition precedent to the issuance of a certificate of revivor."

Derivation: See Derivation under § 23221.

Cross References

Tax on preference income, application of this section, see § 23400.

Library References

Taxation ⇐370(1).
C.J.S. Taxation §§ 445, 453.

Background and general effect of 1965 amendment. Rev. of 1965 Code Leg. (Cont.Educ. of Bar, 1965) page 246.

Article 7

SUSPENSION AND REVIVOR

Sec.
23301. Delinquency; suspension or forfeiture of corporate powers, etc.
23301.5. Failure to file return; suspension or forfeiture of corporate powers.
23302. Notice of delinquency to Secretary of State; effective date of suspension or forfeiture; certificate as prima facie evidence.
23303. Transaction of business or receipt of income after suspension or forfeiture; taxation.
23304. Voidability of contracts violative of article.
23305. Relief from suspension or forfeiture; application; payment; certificate of revivor.
23305a. Certificate of revivor; clearance of corporate name; reinstatement; prima facie evidence.

Article 7 was added by Stats.1949, c. 557, p. 970, § 1.

Cross References

Tax on preference income, application of this article, see § 23400.

§ 23301. Delinquency; suspension or forfeiture of corporate powers, etc.

Except for the purpose of amending the articles of incorporation to set forth a new name, the corporate powers, rights and privileges of a domestic taxpayer, may be suspended, and the exercise of the corporate powers, rights and privileges of a foreign taxpayer in this state may be forfeited if any of the following conditions occur:

(a) If any tax, penalty or interest, or any portion thereof, which is due and payable either at the time the return is required to be filed, or on or before the 15th day of the ninth month following the close of the income year, is not paid on or before 6 p. m. on the last day of the 12th month after the close of the income year; or

(b) If any tax, penalty or interest, or any portion thereof, due and payable upon notice and demand from the Franchise Tax Board,

or due and payable under Section 25936, is not paid on or before 6 o'clock p. m. on the last day of the 11th month following the due date of said tax.

(Added by Stats.1949, c. 557, p. 970, § 1. Amended by Stats.1951, c. 71, p. 267, § 1; Stats.1951, c. 374, p. 1170, § 5, eff. May 9, 1951; Stats.1972, c. 1237, p. 2405, § 16, eff. Dec. 13, 1972; Stats.1976, c. 892, p. 2050, § 5, eff. Sept. 13, 1976; Stats.1978, c. 711, § 5.)

Historical Note

The 1951 amendments, in the introductory paragraph stated that "the exercise of" the corporate powers, etc., of a foreign taxpayer "in this State" shall be forfeited. Following the reference to forfeiture, the amendments deleted the words "and shall be incapable of being exercised for any purpose or in any manner". The amendments substituted letters for numbers in marking subdivisions; added the conjunction "or" at the end of subds. (a) and (b); and, throughout the section, the amendments substituted "Franchise Tax Board" for "commissioner".

For provisions of Stats.1951, Chapter 374 relating to effective date, operative date and application, see Historical Note under § 23001.

The 1972 amendment deleted subd. (c) which had read:

"(c) If any jeopardy or fraud assessment, or any interest or penalty thereon, is not paid within 40 days from the date such tax, penalty and interest are due and payable upon notice and demand from the Franchise Tax Board, unless the bond required by Section 2576la is filed to stay the collection of said tax, penalty and interest, and said tax, interest and penalty are paid within 60 days after notice by the Franchise Tax Board on the taxpayer's petition for reassessment."

The introductory clause of § 16 of Stats.1972, c. 1237, p. 2405, provided that "Section 23301 is amended to read". The Title of the Act refers to section 23301 of the "Revenue and Taxation Code."

The 1976 amendment deleted from subd. (b), following "thereof", "other than jeopardy or fraud assessments"; and added, to subd. (b), the words "or due and payable under Section 25936".

The 1978 amendment substituted "may" for "shall" in two places in the introductory exception.

Amount due and payable as defined in Stats.1977, c. 481 as a perfected and enforceable state tax lien on July 1, 1978, see Historical Note under § 18621.

Derivation: Stats.1929, c. 13, p. 33, § 32; Stats.1931, c. 65, p. (3), § 8; Stats. 1931, c. 1060, p. 2228, § 6; Stats.1935, c. 281, p. 898, § 4; Stats.1937, c. 836, p. 2317, § 17; Stats.1939, c. 1050, p. 2971, § 19.5; Stats.1943, c. 37, p. 211, § 20; Stats.1943, c. 352, p. 1403, § 24.

Cross References

Continued existence of dissolved corporation for certain purposes, see Corporations Code § 2010.
Corporate powers, see Corporations Code § 207.
Corporation revived after suspension, computation of amounts payable, see § 23282.
Dissolution does not abate action against corporation, see Corporations Code § 2010.
Exercise of powers after suspension, penalty, see § 25862.1.
Foreign corporation, defined, see Corporations Code § 171.
Suspended nonprofit mutual benefit corporation, exemption from filing officer list, see Corporations Code § 8810.
Suspended nonprofit public benefit corporation, exemption from filing officer list, see Corporations Code § 9810.

Law Review Commentaries

Delinquency of corporation in payment of franchise taxes as suspending right to defend action. (1938) 26 C.L.R. 265.

Franchise tax act penalties and shareholder derivative suits. (1957) 10 Stan. L.R. 174.

Library References

Corporations ⇐592½.

C.J.S. Corporations § 1639.

Notes of Decisions

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1. Validity

Provision of Banks and Corporation Franchise Tax Act for corporate franchise tax but changing total allowable offset permitted by Const. Art. 13, § 16 (repealed; see, now, Art. 13, § 27) to 75 per cent. tax and allowing offset of 10 per cent. for real property taxes was not unconstitutional as denying equal protection of laws. Barnsdall Oil Co. of California v. Merriam (D.C.1934) 8 F.Supp. 185.

Provision of Bank and Corporation Franchise Tax Act for corporate franchise tax but changing total allowable offset permitted by Constitution to 75 per cent. tax and allowing offset of 10 per cent. for real property taxes was not unconstitutional as taking of property without due process, or as not within legislative power to change offsets. Id.

2. In general

This section which suspends corporations "powers, rights and privileges" for failure to pay its franchise taxes does not operate to pierce corporate veil, absent overriding equities. U. S. v. Standard Beauty Supply Stores, Inc. (C.A.1977) 561 F.2d 774.

Purpose of § 23301 et seq. is to "put pressure on delinquent corporation to pay its taxes. A. E. Cook Co. v. K S Racing Enterprises (1969) 79 Cal.Rptr. 123, 274 A.C.A. 541.

Information regarding suspension of corporate charter by California and Nevada, although coming to court of appeal through defendant's own evidence in action by plaintiff seeking equitable relief that would effectually vacate earlier default judgment obtained by one defendant, was, in legal contemplation, the same as though such facts appeared on face of record in prior action. Lewis v. LeBaron (1967) 61 Cal.Rptr. 903, 254 A.C.A. 303.

Policy underlying § 23302 and this section providing for suspension of corporate powers for nonpayment of franchise tax is to prohibit corporation from enjoying ordinary privileges of a going concern in order to bring pressure to bear on it to pay the tax. City Nat. Bank of Beverly Hills v. Jay Miles, Inc. (1964) 39 Cal. Rptr. 184, 227 C.A.2d 837.

The effect of corporation's default in payment of excise tax would be governed by the provisions in the Bank and Corporation Franchise Tax Act, which was enacted subsequent to constitutional amendment [Art. 13, § 16 (repealed; see, now, Art. 13, § 27)] authorizing excise tax on corporate franchise, in lieu of ad valorem tax, and not by statute enacted prior to the constitutional amendment. Myrick v. O'Neill (1939) 92 P.2d 651, 33 C.A.2d 644.

In view of Const. Art. 12, § 1 (repealed; see, now, Corp.C. §§ 100, 102) permitting the alteration or repeal of all corporation laws, the absolute power of the state over charter and the clear intent of the license tax act, St.1905, p. 403, providing for the forfeiture of charters for nonpayment of the license tax was such that a corporation whose charter was forfeited for failing to pay its license tax, ceased to exist and was no longer capable of holding title to or possession of its property, so that, in the absence of a provision of law for its rehabilitation at the time, its stockholders were vested with the right to have its affairs settled by the directors, as trustees, and property distributed among them pursuant to Stats.Ex.Sess.1906, p. 25, § 10a, and it is immaterial that under Const. Art. 12, § 7 (repealed; see, now, Corp.C. § 909), a forfeiture of the charter of any except a quasi public corporation may be remitted, and that the legislature, at each session previous to an attempted revivor of such corporation for several years, provided for remission of forfeitures previously had. Rossi v. Caire (1921) 199 P. 1042, 186 C. 544.

3. Purpose

Purpose of this section suspending privileges of domestic corporations which have failed to pay taxes, penalty or interest which may be owing is to put pressure on delinquent corporation to pay its taxes.

and that purpose is satisfied by rule which views corporation's tax delinquencies, after correction, as mere irregularities. Peacock Hill Ass'n v. Peacock Lagoon Const. Co. (1972) 105 Cal.Rptr. 29, 503 P.2d 285, 8 C.3d 309.

Purpose of this section suspending a corporation's powers, rights and privileges if corporation fails to pay taxes is to bring pressure upon corporation to pay the tax. Bank of America Nat. Trust and Sav. Ass'n v. Morse (1973) 508 P.2d 194, 235 Or. 72.

4. Law governing

Activities of plaintiff corporation in undertaking discovery and appearing on and filing motions in action to foreclose mechanics' liens during period its corporate powers were suspended were not a nullity and trial court's dismissal of action for want of prosecution after corporation's corporate powers had been revived was error. Diverco Constructors, Inc. v. Wilstein (1970) 85 Cal.Rptr. 851, 4 C.A.3d 6.

California law governed rights, privileges and powers of Nevada corporation with respect to California suspension of corporate charter. Lewis v. Leffaron (1967) 61 Cal.Rptr. 903, 254 C.A.2d 270.

5. Discretion of court

Where pretrial of corporation's action to specifically enforce oral agreement for written lease and option to purchase real property occurred after corporation's powers, rights and privileges were suspended for nonpayment of franchise taxes, corporation took no steps for revivor during four-month interval between suspension and trial and agreement was so uncertain that it could not be specifically enforced in any event, trial court did not abuse its discretion in refusing to permit suspended corporation to introduce evidence, by entering judgment against corporation and by denying the corporation a continuance to seek revivor. Old Fashion Farms v. Hamrick (1967) 61 Cal.Rptr. 254, 253 C.A.2d 233.

6. Delinquency in tax payment

Corporation delinquent in payment of taxes does not forfeit charter and become defunct, but may defend action brought against it. Nathan v. American Photoplayer Co. (1929) 272 P. 775, 95 C.A. 320.

7. Failure to pay tax

Provision in corporate franchise tax law that corporation failing to pay delinquent franchise tax would forfeit right to do intrastate business was applicable on failure of corporation to pay deficiency in tax assessed by franchise tax commissioner. Barnsdall Oil Co. of California v. Merriam (D.C.1934) 8 F.Supp. 185.

Decree against persons described as trustees was void on face as to corporation not paying franchise tax, since corporation was not thereby dissolved. Southern Land Co. v. Panik (1929) 279 P. 490, 99 C.A. 775.

A corporation which fails to pay license and franchise tax becomes defunct under Stats.1915, pp. 425, 420, §§ 7, 10, 12, and Stats.1913, p. 7, § 24, because of the nonpayment and not by proclamation of the Governor. California Nat. Supply Co. v. Finck (1920) 190 P. 634, 183 C. 124.

8. Suspension

Amendment to trust declaration acknowledging indebtedness as subsisting obligation allegedly executed after running of statute of limitations was not invalid or voidable because made and signed on behalf of debtor corporation when the corporation's powers had been suspended by state for nonpayment of franchise taxes. Pacific States Corp. v. Hall (C.C.A. 1938) 100 F.2d 668.

A corporation whose franchise is suspended by the state for failure to pay its corporate franchise tax cannot function as a corporation and is incapable under the state statute of exercising corporate powers for any business purpose. McLaughlin Land & Livestock Co. v. Bank of America Nat. Trust & Savings Ass'n (C.C.A.1938) 94 F.2d 491.

Under provision in corporate franchise tax law suspending corporation's right to do intrastate business where it did not pay franchise tax within 11 months after due date, 11 months' period began to run 10 days from notice and demand from franchise tax commissioner after tax deficiency became final. Barnsdall Oil Co. of California v. Merriam (D.C.1934) 8 F. Supp. 185.

Corporation, which was suspended for failure to pay franchise taxes, and which indicated no intention to pay its delinquent franchise taxes, did not acquire an irrevocable license to carry on litigation in court of appeal in defiance of its statutory obligation by reason of respondent's failure to object in trial court "at the earliest opportunity presented," inasmuch as the main purpose of the statutory suspension was to collect a tax, and respondent was only an incidental beneficiary of that law. Gar-Lo, Inc. v. Prudential Sav. and Loan Ass'n (1974) 116 Cal.Rptr. 389, 41 C.A.3d 242.

Where court reserved ruling on issue of corporation's capacity to defend action and after trial on merits and certificate of revivor had been filed court entered judgment against corporation on ground that it had no standing to defend because of suspension of its corporate powers for failure to pay franchise tax, court's choice of forfeiture, as against judgment on merits, was abuse of discretion and failure of corporation, which attached only the certificate of revivor to motion to set aside judgment, to include copies of amended answer did not render motion a nullity. Duncan v. Sunset Agr. Minerals (1969) 78 Cal.Rptr. 339, 273 A.C.A. 525.

Suspension of power of corporation for nonpayment of taxes after filing of cross complaint by corporation but before rendition of judgment in favor of cross complainant corporation did not deprive court of jurisdiction or render judgment void and subject to collateral attack after it had become final. Traub Co. v. Coffee Break Service, Inc. (1967) 57 Cal.Rptr. 846, 425 P.2d 790, 66 C.2d 368.

Suspension of corporate powers and privileges of a corporate defendant for nonpayment of corporate franchise taxes prevented such corporate defendant from defending lawsuit and from prosecuting defensive action for writ of mandate. Brown v. Superior Court In and For Sacramento County (1963) 51 Cal.Rptr. 633, 242 C.A.2d 519.

The validity of decision by railroad commission authorizing a corporation which had a right to operate as a highway common carrier to transfer such right to another was not affected by fact that, at time of transfer proceedings and unknown to commission, the corporation's corporate powers were suspended, since commission could have authorized transfer upon its own motion and its action was not dependent upon appearance of a party to invoke its jurisdiction. Sale v. Railroad Commission (1940) 104 P.2d 38, 15 C.2d 612.

The purpose of the statutory prohibition under Pol.C. § 3069c (repealed; see Appendix, Corp.C. § 5700 et seq.) concerning suspension of corporate powers of corporations which have failed to pay taxes was to prevent a delinquent corporation from enjoying the ordinary privileges of a going concern in order that some pressure will be brought to bear to force payment of taxes. Id.

Suspension of corporation's business for nonpayment of taxes rendered conveyance by corporation void. Usher v. Henkel (1928) 271 P. 494, 205 C. 413.

Judgment against persons described as trustees of corporation was void and subject to collateral attack as to corporation whose business suspended. Id.

A purported notice of entry of judgment, given to counsel for the corporate plaintiff at a time when the powers of the plaintiff were suspended for failure to pay its franchise tax, is inoperative, since the corporation had no power to receive such notice, nor could any person lawfully receive it in the name of the corporation. Ransome-Crummey Co. v. Superior Court in and for Santa Clara County (1922) 205 P. 446, 188 C. 393.

An attempted notice of intention to move for a new trial, given by a corporation whose powers were then suspended for nonpayment of its franchise tax, does not have the effect, which a valid notice of such intention would have of waiving notice of the entry of judgment. Id.

Under Stats.1917, pp. 371, 377, former Pol.C. § 3069c, subds. 2 and 3, as added by Stats.1917, p. 378, and § 3068c, as added by Stats.1917, p. 355, failure of a corporation to pay its license and franchise taxes, merely suspends its rights, powers, and privileges with a provision for revival, and does not, as did the former law, cause a forfeiture of its charter, and a corporation does not cease to exist during the suspension of its privileges. Id.

California limited term corporation whose term expires during suspension for failure to pay franchise taxes may thereafter amend its articles to provide for perpetual existence if it continues doing business as de facto corporation during its suspension up to date of amendment and pays its back taxes and taxes for each year of suspension. 45 Ops.Atty.Gen. 3, 1-12-65.

9. Reviver

A suspended corporation which pays its franchise taxes and obtains a certificate of revivor during pendency of an action may be allowed to carry on litigation even to extent of validating otherwise invalid prior proceedings. Gar-Lo, Inc. v. Prudential Sav. and Loan Ass'n (1974) 116 Cal.Rptr. 389, 41 C.A.3d 242.

10. Contracts of suspended corporation

Corporations which had been suspended for failing to pay state franchise taxes could not maintain action in court of claims seeking recovery of money relating to contract performed in state. Mather Const. Co. v. U. S. (1973) 475 F.2d 1152, 201 Ct.Cl. 219.

Note executed by corporate officer on behalf of corporation which had no right to exercise its corporate powers because of its failure to pay California corporation taxes but which continued to exist and to do business was enforceable by payee-holder of note against corporation; thus, corporate officer's signature on note was not an unauthorized signature and officer was not personally liable on note. Bank of America Nat. Trust and Sav. Ass'n v. Morse (1973) 508 P.2d 194, 265 Or. 72.

Under Pol.C. § 3669c (repealed; see Appendix, Corp.C. § 5700 et seq.) concerning suspension of corporate powers of corporations which have failed to pay taxes, a corporation which has failed to pay its annual gross receipts tax can exercise none of its corporate powers, rights, or privileges, and a contract to sell or transfer property entered into by such a corporation was void. Sale v. Railroad Commission (1940) 104 P.2d 38, 15 C.2d 612.

Under provision in Bank and Corporation Franchise Tax Act suspending corporation's powers and privileges for failure to pay franchise tax, a contract entered into by the corporation while its corporate powers are suspended is voidable only, and not void. Myrick v. O'Neill (1939) 92 P.2d 651, 33 C.A.2d 644.

The inference to be drawn from amendment to § 32 in the Bank and Corporation Franchise Tax Act, providing that corporation's failure to pay franchise tax suspends powers and privileges of corporation, and "that every contract made in violation of this section should be voidable," by adding the words "at the instance of any party other than the taxpayer," is that until language was so added, such a contract was voidable by anyone, including the taxpayer, and the amendment operates as a restriction in such regard. Id.

A judgment creditor of corporation could not claim that deed to realty executed by corporation was void because deed was executed after corporation's corporate powers had been suspended for failure to pay franchise tax, where there had been no judicial adjudication declaring deed void. Id.

Word "voidable" within Stats.1929, c. 13, § 32 providing that corporation's failure to pay franchise tax suspends powers and privileges of corporation and that every contract made in violation of such section should be voidable means subject to be avoided by court of adequate jurisdiction; voidable act being effective unless set aside by tribunal entitled to do so. Depner v. Joseph Zukin Blouses (1936) 56 P.2d 574, 13 C.A.2d 124.

Corporation could not recover damages for breach of contract to purchase corporation's assets where audit showed assets and liabilities of corporation were not of amount represented by corporation, purchaser had paid under contract more than amount due, and corporation could not make valid tender or transfer of its real or personal property, or valid delivery of its treasury stock as required by the contract because its failure to pay its state franchise and license taxes rendered it incapable of exercising any of its corporate rights or duties. Vogue Creamery Co. v. Acme Ice Cream Co. (1935) 47 P.2d 757, 8 C.A.2d 357.

Corporation, during period of suspension, cannot borrow money, execute notes, or sell stock. Silvey v. Fink (1929) 279 P. 202, 99 C.A. 528.

Subscription contracts and stock certificates issued after suspension of powers of corporation were void, and subscribers were entitled to refund of purchase price. Id.

Subscribers to stock of corporation whose powers were suspended for nonpayment of taxes were not estopped to demand refund, where ignorant of suspension. Id.

Subscribers to stock, ignorant of suspension of corporation's powers, were not precluded from recovering refund, as in pari delicto, though plaintiffs subscribed on specially favorable terms. Id.

Refund to subscribers of part of amount paid under stock subscription contract would not prevent recovery of balance, where corporation's powers were suspended. Id.

That corporation incurred debts after suspension of powers did not prevent subscribers from recovering amount paid on subscription contracts. Id.

Failure of subscribers to return stock certificates or part of refund under subscription contracts, entered into after suspension of corporate powers, did not preclude refund. Id.

11. Capacity to sue

Under this section, corporation which has been suspended for failure to pay franchise taxes is prohibited from suing, from defending suit, or from appealing from adverse decision. Mather Const. Co. v. U. S. (1973) 475 F.2d 1152, 201 Ct.Cl. 219.

Where corporation by reason of its having failed to meet franchise tax obligations of § 23301 et seq. had been suspended from conducting business operations in

state of California, such suspension or forfeiture brought with it inability to either sue or be sued within the state of California. Weinstock v. Sinatra (D.C. 1974) 379 F.Supp. 274.

Although corporation's powers had been suspended by the franchise tax board for nonpayment of franchise taxes, where corporate appellant, in response to motion to dismiss based on the suspension of the corporate powers, filed a certificate of release from suspension of forfeiture which stated that the corporate appellant had been relieved of suspension and was in good standing with the franchise tax board, revival of the corporate powers permitted it to proceed on its appeal. Glendale Federal Savings and Loan Ass'n v. Marina View Heights Development, Inc. (1977) 135 Cal.Rptr. 802, 66 C.A.3d 101.

A corporation which has been suspended for nonpayment of corporate franchise taxes is without capacity to prosecute a civil action while suspended. Welco Const. Inc. v. Modulux, Inc. (1975) 120 Cal.Rptr. 572, 47 C.A.3d 69.

A defense based upon a lack of capacity to sue by reason of a suspension of corporate powers for failure to pay franchise taxes is a species of plea in abatement. Gar-Lo, Inc. v. Prudential Sav. and Loan Ass'n (1974) 116 Cal.Rptr. 389, 41 C.A. 3d 242.

Suspension of corporate powers is defense which may be asserted against corporation so long as the corporation is under disability but on revival of its corporate powers the corporation may proceed with prosecution or defense of the action. Diverco Constructors, Inc. v. Wilstein (1970) 85 Cal.Rptr. 851, 4 C.A.3d 6.

Corporation, which filed suit and obtained writ of attachment at time its corporate powers were suspended for nonpayment of taxes, but which thereafter revived its powers by payment of its back taxes prior to filing of motion to discharge attachment, was entitled to benefit of its attachment. A. E. Cook Co. v. K S Racing Enterprises (1969) 79 Cal.Rptr. 123, 274 A.C.A. 541.

Appeal by corporation whose corporate powers were suspended by secretary of state was subject to motion to dismiss on ground of legal incapacity. Laurel Crest, Inc. v. Vaughn (1969) 77 Cal.Rptr. 538, 272 A.C.A. 417.

Plea of lack of capacity of corporation to maintain action by reason of suspension of corporate powers for nonpayment of its taxes is a plea in abatement which is not favored in law, is to be strictly construed, and must be supported by facts warranting abatement at time of plea. Traub Co. v. Coffee Break Service, Inc. (1967) 57 Cal.Rptr. 846, 425 P.2d 790, 66 C.2d 368.

During period when corporation's powers, rights and privileges are suspended or forfeited, it may not sue or defend an action. Schwartz v. Magyar House, Inc. (1959) 335 P.2d 487, 168 C.A.2d 182.

In a stockholder's derivative suit, where corporation was not attempting to exercise its rights as a corporation, but was being used as a necessary channel by a shareholder, and plaintiff stockholder was not in a position to make a return or compute payment of franchise tax because corporate books were not in his hands, this section and § 23302 prohibiting a corporation from prosecuting or defending an action where it has been suspended for failure to pay franchise tax would not be permitted to stand as a shield for protecting allegedly dishonest corporate officials, and appeal in shareholder's suit would not be dismissed under such circumstances because of corporation's failure to pay such franchise tax. Reed v. Norman (1957) 309 P.2d 809, 48 C.2d 338.

Where plaintiff corporation discontinued its business but had not been dissolved, nor gone through bankruptcy and it was suspended on the state records for failure to pay the minimum franchise tax, and such taxes were paid prior to trial in the court below, plaintiff's revivor was effectual to enable it to proceed in the action. Pacific Atlantic Wine v. Ducrini (1952) 245 P.2d 622, 111 C.A.2d 957.

Where Nevada corporation lost its right to do business in California for failure to pay franchise tax and had its charter revoked in Nevada for failure to file list of officers and directors and to pay filing fee and penalty, and Nevada three-year limitation on right of dissolved corporation to wind up affairs expired before California action to quiet title was commenced, corporation had no capacity to sue or to take an appeal from an adverse decision, notwithstanding a certificate of revivor of its California rights issued upon payment of California franchise tax. Fidelity Metals Corp. v. Risley (1947) 175 P.2d 592, 77 C.A.2d 377.

The effect of dissolution of a corporation or its expiration otherwise depends upon law of its domicile, and a defunct foreign corporation has no greater capacity to commence or maintain an action in state of the forum than it would have in state of its domicile. Id.

Note 11

Surviving directors of a domestic corporation whose charter was suspended for nonpayment of franchise tax were not entitled to maintain an action in behalf of stockholders and creditors to quiet title to realty on the ground that under the second license tax act enacted in 1917, the corporation's charter was forfeited by its failure to pay its franchise tax involving a dissolution of the corporation so as to vest the directors with the authority sought for, since under the act the corporation's rights and privileges were only suspended by failure to pay the tax and were not forfeited, the words "suspended" or "forfeited" not being used interchangeably. Graceland v. Peebler (1942) 123 P.2d 527, 50 C.A.2d 545.

Corporate tenant's assignee suing during period when tenant's franchise was suspended was not entitled to recover damages from stockholders of corporate lessor under their statutory liability, for tenant's eviction, where stockholders had interposed defense of suspension of franchise while franchise was suspended, notwithstanding subsequent revival of franchise. Cleveland v. Gore Cros. (1936) 58 P.2d 931, 14 C.A. 681.

Suspension of corporation for nonpayment of taxes at time of commencement of action did not prevent corporation from maintaining suit after tax had been paid. Maryland Cas. Co. v. Superior Court in and for City and County of San Francisco (1928) 267 P. 160, 91 C.A. 356.

12. Defenses

Corporation's suspension for failure to pay franchise taxes is defense that may be asserted as long as corporation is under disability. Mather Const. Co. v. U. S. (1973) 475 F.2d 1152, 201 Ct.Cl. 219.

Where foreign corporation was lessee of mining lease and such corporation had not paid its franchise tax for a number of years and secretary of state had forfeited corporation's right to transact intrastate business, this section deprived corporation of right to defend action against it to declare lease invalid. Alhambra-Shumway Mines, Inc. v. Alhambra Gold Mine Corp. (1957) 317 P.2d 649, 155 C.A.2d 46, appeal dismissed 78 S.Ct. 993, 356 U.S. 583, 2 L.Ed.2d 1063.

Under Franchise Tax Act, suspending power, right and privileges of delinquent corporate taxpayer except for change of corporate name, delinquent corporate taxpayer could not defend action against it, and hence could not appeal from adverse judgment. Ocean Park Bath House & Amusement Co. v. Pacific Auto Park Co. (1940) 98 P.2d 1008, 37 C.A.2d 158.

Civ.C. § 399 (repealed; see, now, Corp. C. § 2010) permitting continuance of corporate existence, following dissolution, to wind up corporate affairs, and prosecute and defend actions, did not authorize corporation to defend action, for misrepresentations connected with contract of sale of corporate assets, where corporation was delinquent in payment of taxes under Franchise Tax Act, suspending powers, rights, and privileges of delinquent corporate taxpayer except for change of corporate name. Boyle v. Lakeview Creamery Co. (1937) 68 P.2d 968, 9 C.2d 16.

Under Franchise Tax Act, suspending powers, rights, and privileges of delinquent corporate taxpayer except for change of corporate name, delinquent corporate taxpayer could not defend action for misrepresentations connected with contract of sale of corporate assets, and could not appeal from adverse judgment, in view of statute permitting defense of actions notwithstanding delinquency as respects other taxes. Id.

That plaintiff, admitted by the answer to be a corporation and engaged in business as such, has failed to comply with the corporation license law, and so is not entitled to maintain the action, is matter of affirmative defense. Alaska Salmon Co. v. Standard Box Co. (1910) 112 P. 454, 158 C. 567.

13. Limitations

Where corporation filed action after it had been suspended as a corporation for nonpayment of corporate franchise tax and limitations expired during period of suspension, statute of limitations was a substantive defense which accrued during period of suspension and could not be prejudiced by revival of suspended corporation and thus action was barred as untimely and could not be saved under any theory of retroactivity of the corporation's revival. Welco Const., Inc. v. Modulux, Inc. (1975) 120 Cal.Rptr. 572, 47 C.A.3d 69.

14. Estoppel

A sleeping car company, which had paid the tax imposed by Const. Art. 13, § 14 (repealed; see, now, Art. 13, § 19) cannot, in an action to recover the tax, complain that Stats.1911, p. 548, § 24, and Stats.1913, p. 7, § 5, and p. 625, § 9, forfeiting the right of a foreign corporation to do business within the state for nonpayment of the tax, was invalid. Pullman Co. v. Richardson (1923) 43 S.Ct. 366, 261 U.S. 330, 67 L.Ed. 682.

Under Franchise Tax Act, suspending powers, rights and privileges of delinquent

Note 19

corporate taxpayer except for change of corporate name, purchasers were not estopped to deny delinquent corporation's power to defend action for misrepresentations connected with contract of sale of corporate assets by receiver, because of alleged recognition of corporate right to convey, and institution of action. Boyle v. Lakeview Creamery Co. (1937) 68 P.2d 968, 9 C.2d 16.

Lessees' judgment creditors could not claim that modification of lease authorizing lessor to collect and disburse money collected from sublessees was void because modification was executed after lessees' corporate powers had been suspended for failure to pay franchise tax, where wronged party had not by judicial adjudication or otherwise declared agreement void. Depner v. Joseph Zukin Blouses (1936) 56 P.2d 574, 13 C.A.2d 124.

15. Liability for debts

This section providing for suspension of a corporation's powers, rights and privileges when corporation fails to pay taxes does not impose personal liability for corporate debts upon officers and directors of corporation. Bank of America Nat. Trust and Sav. Ass'n v. Morse (1973) 508 P.2d 194, 265 Or. 72.

16. Evidence

Certificate of revival to corporation suspended for nonpayment of taxes was properly admitted, in corporation's action to quiet title to land. Southern Land Co. v. McKenna (1929) 280 P. 144, 100 C.A. 152.

Evidence that certain persons purchased corporate stock after corporation's suspension and revived corporation to institute suit to quiet title was properly excluded. Id.

Evidence that corporation of same name as corporation suing to quiet title was incorporated while plaintiff's powers were suspended, was properly excluded. Id.

17. Burden of proof

Trial court erred when, in holding corporation's sole shareholder personally liable for default judgment against corporation in suit to recover on loan guaranteed by small business administration and secured by lien on assets which corporation had purchased, it assumed that corporation's failure to pay its California franchise taxes constituted prima facie evidence that corporate veil should be pierced; court thereby erroneously shifted burden to shareholder to prove that corporation was not his alter ego, when burden of proof should have been on United States. U. S. v. Standard Beauty Supply Stores, Inc. (C.A.1977) 561 F.2d 774.

Under C.C.P. § 1869 (repealed 1965; see, now, Evidence Code §§ 500, 550) requiring proof in support of a negative allegation, when such allegation is an essential part of the statement of the right or title on which the cause of action or defense is founded, defendant, for special defense having pleaded nonpayment by plaintiff of the corporation license tax, has the burden of proof. Alaska Salmon Co. v. Standard Box Co. (1911) 112 P. 454, 158 C. 567.

18. Findings

In suit by the state against foreign corporation for franchise taxes under the Bank and Corporation Franchise Tax Act, court sufficiently adopted findings on the issues in the case, where court found that corporation engaged in business activities in the state during years in question other than receipt and disbursement of dividends from stock or interest from bonds, and that corporation actively engaged in transactions in the state for purpose of financial or pecuniary gain or profit during such years, and that the state's claims mentioned in the complaint were valid and that tax was due, owing and unpaid. People v. Birch Securities Co. (1948) 196 P.2d 143, 86 C.A.2d 703, certiorari denied 69 S.Ct. 745, 336 U.S. 930, 93 L.Ed. 1095.

19. Review

Taking an appeal from an adverse judgment of the superior court is one of the privileges which the law denies to a domestic corporation suspended for failure to pay franchise taxes. Gur-Lo, Inc. v. Prudential Sav. and Loan Ass'n (1974) 116 Cal.Rptr. 380, 41 C.A.3d 242.

Where corporation subsequent to judgment became delinquent in payment of its taxes and its corporate power was suspended, following the payment of the delinquent taxes and penalty and issuance of a certificate of revivor corporation was entitled to maintain its appeal from adverse judgment. Peacock Hill Ass'n v. Peacock Lagoon Const. Co. (1972) 105 Cal.Rptr. 29, 503 P.2d 285, 8 C.3d 360.

Judgment obtained by substituted corporate cross complainant during period when its powers had been suspended for nonpayment of franchise tax and thus lacked power to prosecute the action could not be given effect, notwithstanding issuance of certificate of revivor after judgment had been obtained. City Nat. Bank of Beverly Hills v. Jay Miles, Inc. (1964) 39 Cal.Rptr. 184, 227 C.A.2d 837.

Note 19

Fraud in permitting corporate license tax to become delinquent was not presented in trial court in suit to enjoin enforcement of judgment for corporation and hence could not be urged on appeal. Smith v. Lewis (1930) 295 P. 37, 211 C. 294.

§ 23301.5. Failure to file return; suspension or forfeiture of corporate powers

Except for the purpose of amending the articles of incorporation to set forth a new name, under regulations prescribed by the Franchise Tax Board, the corporate powers, rights and privileges of a domestic corporation may be suspended, and the exercise of the corporate powers, rights and privileges of a foreign taxpayer in this state may be forfeited if a taxpayer fails to file a return.

(Added by Stats.1965, c. 641, p. 1992, § 16, eff. June 12, 1965. Amended by Stats.1974, c. 560, p. 1380, § 1.)

Historical Note

The 1974 amendment deleted the last sentence which had read: "Notify the Franchise Tax Board of its annual accounting period, within nine months after the date of its incorporation or qualification".

Cross References

Suspended nonprofit mutual benefit corporation, exemption from filing officer list, see Corporations Code § 8810.

Suspended nonprofit public benefit corporation, exemption from filing officer list, see Corporations Code § 6810.

Library References

Corporations ⇐599, 651.
Taxation ⇐366, 533.
C.J.S. Corporations §§ 1065, 1843.
C.J.S. Taxation §§ 431, 432, 437, 439, 629, 1075.

Background and general effect of 1965 addition. Rev. of 1965 Code Leg. (Cont.Educ. of Bar, 1965) page 246.

§ 23302. Notice of delinquency to Secretary of State; effective date of suspension or forfeiture; certificate as prima facie evidence

The Franchise Tax Board shall transmit the names of taxpayers to the Secretary of State as to which the suspension or forfeiture provisions of Section 23301, 23301.5 or 23775 are or become applicable, and the suspension or forfeiture therein provided for shall thereupon become effective and the certificate of the Secretary of State shall be prima facie evidence of such suspension or forfeiture.

(Added by Stats.1949, c. 557, p. 970, § 1. Amended by Stats.1951, c. 71, p. 268, § 1; Stats.1977, c. 235, § 28.)

Historical Note

The 1951 amendment substituted "Franchise Tax Board" for "commissioner".

The 1977 amendment substituted "names of taxpayers to the Secretary of State as to which the suspension or forfeiture provisions of Sections 23301, 23301.5 or 23775 are or become applicable" for "name of such delinquent taxpayer to the Secretary of State".

Application of former General Corporations Law to banks until Jan. 1, 1979, see Historical Note under Corp.C. § 114.

Derivation: See Derivation under § 23301.

Cross References

Statute making one fact prima facie evidence of another fact as establishing rebuttable presumption, see Evidence Code § 602.

Notes of Decisions

Capacity to sue 2
Construction and application 1
Revivor 3

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1. Construction and application

Subsequent revival of corporate powers of appellant following their suspension, which took place prior to entry of judgment against appellant, validated procedural steps taken on behalf of appellant while it was under suspension and permitted it to proceed with appeal from judgment and from order denying motion to set aside the judgment. Rooney v. Vermont Inv. Corp. (1973) 110 Cal.Rptr. 353, 515 P.2d 297, 10 C.3d 351.

Where contract for sale of boats was executed before powers of corporate seller were suspended by secretary of state for nonpayment of franchise taxes, seller became incapable of performing contract one month before period of performance commenced, remained incapable throughout such period and did not manufacture any boats under agreement and failure to pay taxes occurred long before execution of agreement, assignee of seller after revival of seller's corporate powers was not entitled to maintain action against buyer for breach of contract on basis of buyer's repudiation of contract while corporate powers were suspended. Erb v. Flower (1967) 56 Cal.Rptr. 612, 248 C.A.2d 499.

Suspension of corporate powers and privileges of a corporate defendant for nonpayment of corporate franchise taxes prevented such corporate defendant from defending lawsuit and from prosecuting defensive action for writ of mandate. Brown v. Superior Court In and For Sacramento County (1966) 51 Cal.Rptr. 633, 242 C.A.2d 519.

Policy underlying § 23301 and this section providing for suspension of corporate powers for nonpayment of franchise tax is to prohibit corporation from enjoying ordinary privileges of a going concern in order to bring pressure to bear on it to pay the tax. City Nat. Bank of Beverly Hills v. Jay Miles, Inc. (1964) 39 Cal. Rptr. 184, 227 C.A.2d 837.

In a stockholder's derivative suit, where corporation was not attempting to exercise its rights as a corporation, but was being used as a necessary channel by a shareholder, and plaintiff stockholder was not in a position to make a return or compute payment of franchise tax because corporate books were not in his hands, § 23301 and this section prohibiting a corporation from prosecuting or defending an action where it has been suspended for failure to pay franchise tax would not be permitted to stand as a shield for protecting allegedly dishonest corporate officials, and appeal in shareholder's suit would not be dismissed under such circumstances because of corporation's failure to pay such franchise tax. Reed v. Norman (1957) 309 P.2d 869, 48 C.2d 398.

2. Capacity to sue

Corporation, which was suspended for failure to pay franchise taxes, and which indicated no intention to pay its delinquent franchise taxes, did not acquire an irrevocable license to carry on litigation in court of appeal in defiance of its statutory obligation by reason of respondent's failure to object in trial court "at the earliest opportunity presented," inasmuch as the main purpose of the statutory suspension was to collect a tax, and respondent was only an incidental beneficiary of that law. Gar-Lo, Inc. v. Prudential Sav. and Loan Ass'n (1974) 116 Cal.Rptr. 380, 41 C.A.3d 242.

Taking an appeal from an adverse judgment of the superior court is one of the privileges which the law denies to a domestic corporation suspended for failure to pay franchise taxes. Id.

A defense based upon a lack of capacity to sue by reason of a suspension of corporate powers for failure to pay franchise taxes is a species of plea in abatement. Id.

3. Revivor

A suspended corporation which pays its franchise taxes and obtains a certificate of revivor during pendency of an action may be allowed to carry on litigation even to extent of validating otherwise invalid prior proceedings. Gar-Lo, Inc. v. Prudential Sav. and Loan Ass'n (1974) 116 Cal.Rptr. 389, 41 C.A.3d 242.

§ 23303. Transaction of business or receipt of income after suspension or forfeiture; taxation

Notwithstanding the provisions of Section 23301 or Section 23301.5, any bank or corporation which transacts business or receives income within the period of its suspension or forfeiture shall be subject to tax under the provisions of this chapter.

(Added by Stats.1957, c. 163, p. 792, § 2, eff. April 23, 1957. Amended by Stats.1967, c. 953, p. 2449, § 1.)

Historical Note

The 1967 amendment inserted the reference to § 23301.5 near the beginning of the section.

Former § 23303, added by Stats.1949, c. 557, p. 971, § 1, relating to punishment for exercise of corporate powers after suspension or forfeiture was repealed by Stats.1957, c. 163, p. 792, § 1. See, now, § 25962.1.

Cross References

Exercise of powers after suspension, penalty, see § 25962.1.

Library References

Banks and Banking ⇐72, 316.
Corporations ⇐617(1).
Taxation ⇐533, 837.
C.J.S. Banks and Banking §§ 483, 1064.
C.J.S. Corporations § 1727.
C.J.S. Taxation §§ 639, 1024 et seq., 1040 et seq., 1084, 1087.

Notes of Decisions

1. In general

California limited term corporation whose term expires during suspension for failure to pay franchise taxes may thereafter amend its articles to provide for perpetual existence if it continues doing business as de facto corporation during its suspension up to date of amendment and pays its back taxes and taxes for each year of suspension. 45 Ops.Atty.Gen. 3, 1-12-65.

§ 23304. Voidability of contracts violative of article

Every contract made in violation of this article is hereby declared to be voidable, at the instance of any party other than the taxpayer.

(Added by Stats.1949, c. 557, p. 971, § 1.)

Historical Note

Derivation: See Derivation under § 23301.

Notes of Decisions

1. In general

Amendment to trust declaration acknowledging indebtedness as subsisting obligation allegedly executed after running of statute of limitations was not invalid or voidable because made and signed on behalf of debtor corporation when the corporation's powers had been suspended by state for nonpayment of franchise taxes. Pacific States Corp. v. Hall (C.C.A.1948) 166 F.2d 468.

Where contract for sale of boats was executed before powers of corporate seller were suspended by secretary of state for nonpayment of franchise taxes, seller became incapable of performing contract one month before period of performance commenced, remained incapable throughout such period and did not manufacture any boats under agreement and failure to pay taxes occurred long before execution of agreement, assignee of seller after revival of seller's corporate powers was not entitled to maintain action against buyer for breach of contract on basis of buyer's repudiation of contract while corporate powers were suspended. Erb v. Flower (1967) 56 Cal.Rptr. 612, 248 C.A.2d 199.

Where note executed on behalf of corporation, powers of which had been suspended for failure to pay California corporation taxes, was not void under this section but only voidable and payee-holder of note made no attempt to avoid the transaction and where corporation remained in existence, continued to do business and had assets until after note's maturity date, there was no failure of consideration for note. Bank of America Nat. Trust and Sav. Ass'n v. Morse (1973) 508 P.2d 194, 265 Or. 72.

Lessees' judgment creditors could not claim that modification of lease authorizing lessor to collect and disburse money collected from subslessees was void because modification was executed after lessees' corporate powers had been suspended for failure to pay franchise tax, where wronged party had not by judicial adjudication or otherwise declared agreement void. Depner v. Joseph Zukin Blouses (1936) 56 P.2d 574, 13 C.A.2d 124.

Word "voidable" within Stats.1929, pp. 19, 33, providing that corporation's failure to pay franchise tax suspends powers and privileges of corporation and that every contract made in violation of such section should be voidable means subject to be avoided by court of adequate jurisdiction; voidable act being effective unless set aside by tribunal entitled to do so. Id.

§ 23305. Relief from suspension or forfeiture; application; payment; certificate of revivor

Any taxpayer which has suffered the suspension or forfeiture provided for in Section 23301 or Section 23301.5 may be relieved therefrom upon making application therefor in writing to the Franchise Tax Board and upon payment of the tax and the interest and penalties for nonpayment of which the suspension or forfeiture occurred, together with all other taxes, deficiencies, interest and penalties due under this part, and upon the issuance by the Franchise Tax Board of a certificate of revivor. Application for such certificate on behalf of any domestic bank or corporation which has suffered such suspension may be made by any stockholder or creditor or by a majority of the surviving trustees or directors thereof; application for such certificate may be made by any foreign bank or corporation which has suffered such forfeiture or by any stockholder or creditor thereof.

(Added by Stats.1949, c. 557, p. 971, § 1. Amended by Stats.1951, c. 71, p. 268, § 1; Stats.1967, c. 953, p. 2449, § 2; Stats.1969, c. 29, p. 134, § 5.)

Historical Note

The 1951 amendment substituted "Franchise Tax Board" for "commissioner".

The 1967 amendment inserted the reference to § 23301.5 near the beginning of the section.

The 1969 amendment deleted the word "therefore" and substituted "therefor" in the first sentence.

Derivation: Stats.1929, c. 13, p. 33, § 33; Stats.1931, c. 1066, p. 2228, § 7; Stats.1933, c. 210, p. 706, § 14; Stats. 1935, c. 281, p. 1000, § 5; Stats.1937, c. 836, p. 2348, § 18.

Forms

See West's California Code Forms, Revenue and Taxation.

Cross References

Applicability of this section to revival from suspension, see § 23571.
Corporation revived after suspension, computation of amounts payable, see § 23282.

Notes of Decisions

In general 1
Revivor 2

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1. In general

Where corporation had been suspended from conducting business operations in state of California, by reason of its having failed to meet franchise tax obligations of § 23301 et seq. and where such suspension or forfeiture brought with it inability to sue or be sued, corporation's incapacity "to be sued" did not relate to its amenability to suit but rather to inability to defend, and corporation was required to suffer entry of default judgment against it in absence of corporation's compliance with this section providing procedure for reinstatement of corporate powers. Weinstock v. Sinatra (D.C.1974) 379 F.Supp. 274.

Suspension of power of corporation for nonpayment of taxes after filing of cross-complaint by corporation but before rendition of judgment in favor of cross-complainant corporation did not deprive court of jurisdiction or render judgment void and subject to collateral attack after it had become final. Trans Co. v. Coffee Break Service, Inc. (1967) 57 Cal.Rptr. 846, 425 P.2d 790, 66 C.2d 258.

Where corporation involved in shareholder's derivative suit was suspended for nonpayment of franchise taxes in 1952, and judgment dismissing suit was entered in 1956, and defendants at no time until motion to dismiss appeal from such dismissal made any claim that the action could not be maintained because of such suspension, and the records and books of the corporation had been retained by defendants, under such circumstances, even if plaintiff could not maintain the action because of the suspension, he was entitled to an opportunity of paying taxes and reinstating corporation. Reed v. Norman (1937) 309 P.2d 809, 48 C.2d 338.

Corporate tenant's assignee suing during period when tenant's franchise was suspended was not entitled to recover damages from stockholders of corporate lessor under their statutory liability, for tenant's eviction, where stockholders had interposed defense of suspension of franchise while franchise was suspended, notwithstanding subsequent revival of franchise. Cleveland v. Gore Bros. (1936) 58 P.2d 931, 14 C.A. 681.

2. Revivor

That foreign corporation could obtain "revivor" of its corporate powers, rights and privileges by paying disputed bank and corporation franchise tax would not preclude granting injunction against threatened acts in enforcement of the tax, where, in order to obtain money to pay the taxes, the corporation would have to transact intrastate business in the state, which state officers would prosecute as a misdemeanor. Birch v. McColgan (D.C. 1941) 39 F.Supp. 358.

On revival of corporate powers after payment of franchise tax, corporation could continue action commenced during period of suspension and not previously dismissed. La France Enterprises v. Van Der Linden (1977) 138 Cal.Rptr. 690, 70 C.A.3d 375.

Where corporation subsequent to judgment became delinquent in payment of its taxes and its corporate power was suspended, following the payment of the delinquent taxes and penalty and issuance of a certificate of revivor corporation was entitled to maintain its appeal from adverse judgment. Peacock Hill Ass'n v. Peacock Lagoon Const. Co. (1972) 105 Cal.Rptr. 29, 503 P.2d 285, 8 C.3d 369.

Corporation, which filed suit and obtained writ of attachment at time its corporate powers were suspended for nonpayment of taxes, but which thereafter revived its powers by payment of its back taxes prior to filing of motion to discharge attachment, was entitled to benefit of its attachment. A. E. Cook Co. v. K. S. Pacing Enterprises (1969) 79 Cal.Rptr. 123, 274 A.C.A. 541.

Revivor did not validate acts undertaken by corporation during period of suspension of its corporate powers for nonpayment of franchise tax. City Nat. Bank of Beverly Hills v. Jay Miles, Inc. (1964) 39 Cal.Rptr. 181, 227 C.A.2d 837.

The revival of the powers of a corporation, after their suspension for nonpayment of the franchise tax, does not validate acts attempted during the period of suspension. Ransome-Crummey Co. v. Superior Court in and for Santa Clara County (1922) 205 P. 446, 188 C. 393.

Though Stats.1906, Ex.Sess., p. 22, Stats.1907, p. 745, repealed 1943, Stats. 1909, p. 454, and Stats.1911, p. 1094, amending the corporation license tax act, Stats.1905, p. 193, and Stats.1913, p. 513, repealing it, while providing for the rehabilitation of such corporations as had previously failed to pay the tax, did not indicate how the assent of the former stockholders to such revivor was to be expressed, it was the intention that the statutory trustees, the former directors, who were simply trustees in liquidation, under Stats.Ex.Sess.1906, § 10a, supra, should represent the former corporation in the matter of revivor, that their consent alone should be sufficient, and that the rehabilitated corporation should proceed as if no forfeiture had occurred, with all its former powers and property remaining in the trustees' hands subject to obligations lawfully incurred by them during its lapse of life, the proviso in the amendments of 1909, 1911, and 1913 that such rehabilitation should be without prejudice to any action, defense, or right which accrued by reason of the forfeiture not being intended to save the right of a stockholder to prevent the corporation's rehabilitation, but only to save such rights as had accrued in the trustees' management of the affairs of the former corporation, but the enforcement of such rehabilitation provision against a nonconsenting former stockholder, who diligently asserted his rights, would be an impairment of a vested right in property prohibited by both state and federal Constitutions, the rights of former stockholders under the statutory trust to have the property distributed among them being secure against impairment by any subsequent act of the legislature, though Const. Art. 12, §§ 1 and 7 (repealed; see, now, Corp.C. §§ 100, 102, 960), does not prohibit such action, such vesting being complete prior to the attempted exercise of such power. Rossi v. Caire (1921) 199 P. 1042, 186 C. 544.

§ 23305a. Certificate of revivor; clearance of corporate name; reinstatement; prima facie evidence

Before such certificate of revivor is issued by the Franchise Tax Board, it shall obtain from the Secretary of State an endorsement upon such application of the fact that the name of the taxpayer then meets the requirements of subdivision (b) of Section 201 of the Corporations Code in the case of a domestic bank or corporation or of subdivision (b) of Section 2106 of the Corporations Code in the case of a foreign corporation. The reference to amendment of the articles of incorporation to set forth a new name contained in Sections 23301, 23301.5 and 23775 includes in the case of a foreign corporation the filing of an amended statement and designation to set forth its new name or to set forth an assumed name under subdivision (b) of Section 2106 of the Corporations Code. Upon the issuance of such certificate by the Franchise Tax Board the taxpayer therein named shall become reinstated but such reinstatement shall be without prejudice

to any action, defense or right which has accrued by reason of the original suspension or forfeiture. The certificate of revivor shall be prima facie evidence of such reinstatement and such certificate may be recorded in the office of the county recorder of any county of this state.

(Added by Stats.1949, c. 557, p. 971, § 1. Amended by Stats.1951, c. 71, p. 268, § 1; Stats.1977, c. 235, § 29.)

Historical Note

The 1951 amendment substituted "Franchise Tax Board" for "commissioner".

The 1977 amendment rewrote the first and second sentences, which previously read:

"Before such certificate of revivor is issued by the Franchise Tax Board, it shall obtain from the Secretary of State an endorsement upon such application of the fact that the name of the taxpayer is not one which is likely to mislead the public or which is the same as, or resembles so closely as to tend to deceive, the name of a foreign or domestic bank or corporation which is authorized to transact business in this State or a name which is under reservation. If the name of the taxpayer is one which is likely to mislead the public or is the same as, or resembles so closely as to tend to deceive, the name of a foreign or domestic bank or corporation which is authorized to transact business in this State, or a name which is under reservation, the Secretary of State shall not endorse such statement upon such application until the taxpayer therein named, if it be a domestic bank or corporation, files in his office amended articles of incorporation changing its name, or, if it be a foreign taxpayer, files in his office a copy of such document changing its name as may be required by the law of the State or other jurisdiction under which it was incorporated, which copy shall be certified in the manner prescribed by Section 6400 of the Corporations Code".

Application of former General Corporations Law to banks until Jan. 1, 1979, see Historical Note under Corp.C. § 114.

Derivation: See Derivation under § 23305.

Cross References

Applicability of this section to revival from suspension, see § 23571.
Statute making one fact prima facie evidence of another fact as establishing rebuttable presumption, see Evidence Code § 602.

Library References

Corporations ⇨615½. C.J.S. Corporations § 1741.

Notes of Decisions

Construction and application 1
Limitations 2

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1. Construction and application

Taking of a default judgment by virtue of fact that corporation may not defend is not a "right" within provision of this section that reinstatement shall be without prejudice to any action, defense or "right" which has accrued by reason of original suspension. Schwartz v. Magyar House, Inc. (1959) 335 P.2d 487, 168 C.A.2d 182.

2. Limitations

Where corporation filed action after it had been suspended as a corporation for nonpayment of corporate franchise tax and limitations expired during period of suspension, statute of limitations was a substantive defense which accrued during period of suspension and could not be prejudiced by revival of suspended corporation and thus action was barred as untimely and could not be saved under any theory of retroactivity of the corporation's revival. Welco Const., Inc. v. Modulux, Inc. (1975) 120 Cal.Rptr. 572, 47 C.A.3d 69.

Article 8

DISSOLUTION OR WITHDRAWAL

Sec.
23331. Effective date.
23332. Dissolution or withdrawal during taxable year; offset for financial corporations; disallowance of certain abatements or refunds; minimum tax; determination after January 1, 1973.
23332.5 Financial corporation; year of ceasing business; dissolving or withdrawing after December 31, 1972.
23333. Banks annd financial corporations; rate of tax; refund; collection of excess.
23334. Certiiicate of payment or security for tax; necessity; procedure.

Article 8 was added by Stats.1949, c. 557, p. 972, § 1.

Cross References

Tax on preference income, application of this article, see § 23400.

Law Review Commentaries

California franchise tax as applied to commencing and dissolving corporations. Edward A. Weiss (1960) 12 Hast.L.J. 93.

§ 23331. Effective date

For the purposes of this article, the effective date of dissolution of a corporation is the date on which the certified copy of the court decree, judgment or order declaring the corporation duly wound up and dissolved is filed in the office of the Secretary of State or the date on which the certificate of winding up and dissolution is filed in the office of the Secretary of State. For the purposes of this article, the effective date of withdrawal of a foreign corporation is the date on which the certificate of withdrawal is filed in the office of the Secretary of State.

(Added by Stats.1949, c. 557, p. 972, § 1.)

Historical Note

Derivation: Stats.1929, c. 13, p. 25, § 13; Stats.1929, c. 781, p. 1555, § 1; Stats.1931, c. 65, p. 65, § 3; Stats.1933, c. 210, p. 686, § 5; Stats.1933, c. 303, p. 872, § 6; Stats.1935, c. 275, p. 907, § 9; Stats. 1937, c. 836, p. 2331, § 6; Stats.1939, c. 1050, p. 2946, § 7; Stats.1943, c. 37, p. 185, § 6; Stats.1943, c. 352, p. 1430, § 9; Stats.1945, c. 916, p. 1800, § 7; Stats. 1947, c. 830, p. 1979, § 2; Stats.1949, c. 513, p. 898, § 7.

Cross References

Credit union, effective date of termination of corporate existence, see Financial Code § 15656.
Unreported installment income, effect of cessation of business, see § 24672.

Law Review Commentaries

Common method of selling close corporation reducing tax liabilities hit by District Court. (1952) 38 A.B.A.J. 955.

Notes of Decisions

1. In general

Where bank ceased to do business and filed certificate of election to dissolve and banking permit was canceled, its decision to wind up became irrevocable on distribution of assets to shareholders, and for practical purposes bank was "dissolved", and its dissolution was "effective" within statute relieving bank from liability for subsequent franchise taxes, notwithstanding failure to file statutory certificate of dissolution. Bank of Alameda County v. McColgan (1945) 159 P.2d 31, 69 C.A.2d 464.

The statute forbidding filing of certificate of dissolution of bank or corporation until franchise tax has been paid was inapplicable to bank which, having ceased to do business, paid prorated tax based on bank's figures, though commissioner later found unreported income and assessed additional tax, in view of statute continuing corporate existence if necessary for winding up. Id.

§ 23332. Dissolution or withdrawal during taxable year; offset for financial corporations; disallowance of certain abatements or refunds; minimum tax; determination after January 1, 1973

(a) Except in the case of a taxpayer subject to the provisions of Section 23222a, any taxpayer which is dissolved or withdraws from the state during any taxable year shall pay a tax only for the months of the taxable year which precede the effective date of such dissolution or withdrawal, according to or measured by (1) the net income of the preceding income year or (2) a percentage of net income determined by ascertaining the ratio which the months of the taxable year, preceding the effective date of dissolution or withdrawal, bears to the months of the income year, whichever is the lesser amount. As to financial corporations, the offset from the tax for the months of such taxable year prior to the effective date of such dissolution or withdrawal shall not exceed that proportion of the offset computed under Sections 23184 to 23185b, inclusive, which the number of said months prior to the effective date of such dissolution or withdrawal bears to the number of months of the preceding income year. The taxes levied under this chapter shall not be subject to abatement or refund because of the cessation of business or corporate existence of any taxpayer pursuant to a reorganization, consolidation, or merger (as defined by Section 23251). In any event, each corporation shall pay a tax not subject to offset for such period in an amount equal to the minimum tax prescribed by Section 23153.

(b) The provisions of subdivision (a) shall be applied only with respect to taxpayers which dissolve or withdraw before January 1,

1973. On and after such date, the tax for the taxable year in which the taxpayer ceases doing business, dissolves or withdraws shall be determined under the appropriate provisions of Section 23151.1, 23181 or 23183, whichever is applicable.

(Added by Stats.1949, c. 557, p. 972, § 1. Amended by Stats.1951, c. 210, p. 461, § 1, eff. May 3, 1951; Stats.1961, c. 499, p. 1598, § 2, eff. May 24, 1961; Stats.1967, c. 953, p. 2450, § 3; Stats.1971, c. 1304, p. 2565, § 11, eff. Oct. 29, 1971; Stats.1971, Ex.Sess., c. 1, p. 5054, § 213.9, eff. Dec. 8, 1971; Stats.1972, c. 773, p. 1387, § 4.)

Historical Note

The 1951 amendment added at the beginning of the section the words "Except in the case of a taxpayer subject to the provisions of Section 23222a". In the second sentence, the amendment referred to "financial corporations", instead of to "such taxpayer"; it referred to "Sections 23184 to 23185(b)", instead of to "Sections 23185 to 23185(b)"; and near the end of the third sentence it substituted "taxpayer" for "bank or corporation". In the fourth sentence, the amendment referred to the minimum tax "prescribed by", instead of "provided for in", § 23153.

The 1951 act also contained the following provisions:

"Sec. 2. This act inasmuch as it provides for a tax levy for the usual current expenses of the State, shall, under the provisions of Section 1 of Article IV of the Constitution, take effect immediately.

"Sec. 4. The provisions of this act effecting changes in the computation of taxes shall be applied only in the computation of taxes, for the purpose of the taxes imposed under Chapter 2, of Part 11, Division 2 of the Revenue and Taxation Code, measured by income for income years beginning after December 31, 1950, and for the purpose of the tax imposed under Chapter 3 of Part 11, Division 2 of the Revenue and Taxation Code, for taxable years beginning after December 31, 1950, and the remaining provisions of this act shall become effective on the effective date of this act. Provisions effecting changes in the computation of taxes shall mean those affecting income, deductions, rates, method of calculating tax, exclusions, exemptions, and credits. Any amendment to any section of the Revenue and Taxation Code shall not, of itself, be taken as an indication that a change of meaning is intended."

A proviso at the end of the second sentence became the third sentence in 1961, and the parenthetical reference to § 23251 was added.

The reference to "section 23185(b)" was changed to "section 23185b" in 1967.

The 1971 amendments added subd. (b) which read:

"(b) The provisions of subdivision (a) shall be applied only in the computation and payment of taxes for taxable years beginning before January 1, 1973. With respect to taxable years beginning after December 31, 1972, the tax for the taxable year in which the taxpayer ceases doing business, dissolves or withdraws shall be determined under subdivision (c) of Section 23151.1, subdivision (b) or (c) of Section 23181, or subdivision (b) or (c) of Section 23183, whichever is applicable."

Application of Stats.1971, c. 1304, p. 2567, to the computation of taxes after Dec. 31, 1972, see Historical Note under § 23151.1.

Stats.1971, Ex.Sess., c. 1, p. 5131, § 317, governed the application of the increases in the bank and corporation tax rates to various fiscal years ending after Dec. 31, 1971. See Historical Note under § 23036.

The 1972 amendment rewrote subd. (b) to read as it now appears.

Derivation: See Derivation under § 23331.

Cross References

Unreported installment income, effect of cessation of business, see § 24072.

Law Review Commentaries

Dissolution, withdrawal and cessation of business by corporations as affecting tax liability. Bruce W. Walker and Hebard P. Smith (1960) 12 Hast.L.J. 16.

Library References

Taxation ⇐14, 114. C.J.S. Taxation §§ 127, 128, 156, 261.

Notes of Decisions

1. In general

Under constitutional provision of Art. 13, § 11½ (repealed; see, now, Art. 13, § 28) imposing gross premiums tax upon insurers in lieu of all other taxes, except for provision that trust business of title insurer is taxable to same extent and manner as trust companies and trust departments of banks, title insurer which liquidated subsidiaries, which engaged in activities unrelated to title insurer's trust operation and which had been liable for franchise tax, and transferred subsidiaries' business assets to itself and continued operation of all business and operating assets of each subsidiary was not "a party to reorganization" within § 23253 requiring net gain of transferor to any such taxpayer to be included in measure of franchise tax on transferee for following year, and title insurer was not required to calculate its corporate franchise tax for year following transfer by including income of the transferred corporations for previous year. First Am. Title Ins. & Trust Co. v. Franchise Tax Bd. (1971) 93 Cal.Rptr. 177, 15 C.A.3d 343.

"Merger" as form of reorganization under franchise tax refund statute (this section) is not restricted to statutory merger but includes de facto merger as well. Heating Equipment Mfg. Co. v. Franchise Tax Bd. (1964) 39 Cal.Rptr. 453, 228 C.A.2d 290.

Where only relation between plaintiff corporation and foreign corporation had been that of debtor and creditor and foreign corporation exercised option under contract to purchase plaintiff corporation's assets in return for distribution to plaintiff corporation's stockholders of less than seven per cent of foreign corporation's stock, which gave plaintiff corporation's stockholders no control of foreign corporation, and plaintiff corporation went through dissolution, there was no reorganization, consolidation or merger within provision of Bank and Corporation Franchise Tax Act providing that corporation is liable for corporation tax only for months of taxable year preceding dissolution, but that there shall be no abatement or refund because of cessation of business due to organization, consolidation or merger. Andersen-Carlson Mfg. Co. v. Franchise Tax Bd. (1953) 283 P.2d 278, 132 C.A.2d 825.

§ 23332.5. Financial corporation; year of ceasing business, dissolving or withdrawing after December 31, 1972

If a financial corporation ceases doing business, dissolves, or withdraws from the state during any taxable year beginning after December 31, 1972, the tax for the taxable year during which cessation of doing business, dissolution or withdrawal occurs shall be computed as prescribed by subdivision (b) or (d) of Section 23183, 23183.1, or 23183.2. In determining the amount of such tax, a financial corporation will be allowed an offset against the amounts paid during such taxable year to this state as personal property taxes, or as license fees or excise taxes as described in subdivisions (a) to (d), inclusive, of Section 23184. However, after the allowance of such offsets, the tax on a financial corporation shall not be less than the tax prescribed in Section 23184.

(Added by Stats.1971, c. 1304, p. 2566, § 12, eff. Oct. 29, 1971. Amended by Stats.1972, c. 1237, p. 2405, § 17, eff. Dec. 13, 1972; Stats.1972, c. 1406, p. 2981, § 29.3, eff. Dec. 26, 1972; Stats.1973, c. 208, p. 568, § 59, eff. July 11, 1973; Stats.1977, c. 552, § 18, eff. Sept. 3, 1977; Stats.1978, c. 380, § 141.)

Historical Note

The 1972 amendment increased the rate, in the last sentence, from "7" to "9" percent.

Application of Stats.1972, c. 1406, to computation of taxes for income years ending after June 30, 1973, see Historical Note under § 23151.

The 1973 amendment substituted, in the last sentence, the words "the rate prescribed in Section 23151" for "9 percent of its net income for the final taxable year".

The 1977 amendment, in the first sentence, substituted "subdivision (b) or (d) of Section 23183, 23183.1 or 23183.2," for "subdivision (b) or (c) of Section 23183"; in the second sentence substituted "such taxable year" for "the final taxable year"; and in the last sentence following "shall not be less than the" deleted "rate prescribed in Section 23151 nor less than the minimum."

The 1978 amendment made no change in the section.

Cross References

Tax on preference income, application of this section, see § 23400.

Library References

Taxation ⇐114, 117, 364 et seq. C.J.S. Taxation §§ 127, 134, 156, 261, 421.

§ 23333. Banks and financial corporations; rate of tax; refund; collection of excess

(a) A taxpayer subject to Section 23186 shall, if it dissolves or withdraws prior to the date the rate is determined under Section 23186, pay a tax under Section 23332 at the maximum rate prescribed by said Section 23186; if the rate is subsequently determined to be less than the maximum prescribed by Section 23186, a refund shall, within thirty (30) days of such determination, be made as prescribed by Article 1 of Chapter 22[1]; that part of the tax thus determined which is in excess of 7.6 percent shall be collected as a demand for second installment under Article 3 of Chapter 19.[2]

(b) For calendar or fiscal years ending after June 30, 1973, the rate of tax shall be 9 percent instead of 7.6 percent as provided by subdivision (a).

(Added by Stats.1972, c. 1406, p. 2982, § 30, eff. Dec. 26, 1972.)

[1] Section 26071 et seq.
[2] Section 25551 et seq.

Historical Note

Application of Stats.1972, c. 1406, to computation of taxes for income years ending after June 30, 1973, see Historical Note under § 23151.

Derivation: Former § 23333, added by Stats.1949, c. 557, p. 972, § 1, amended by Stats.1955, c. 938, p. 1574, § 11; Stats. 1959, c. 1127, p. 3213, § 4.5; Stats.1965, c. 320, p. 1419, § 1; Stats.1967, c. 963, p. 2511, § 107; Stats.1971, Ex.Sess., c. 1, p. 5055, § 214; repealed by Stats.1972, c. 1406, p. 2982, § 29.5.

The 1955 amendment substituted references to "Chapter 22", and to "Chapter 19", in place of the former references to "Chapter 13", and to "Chapter 10".

For additional provisions of the 1955 act, see Historical Note under § 23051.

Application of provisions effecting changes in the computation of taxes for all income years ending after Dec. 31, 1958, see Historical Note under § 23151.

The percentage was increased from "4 percent" to "5.5 percent" in 1959.

The words "under Section 23332" were substituted, following the words "pay a tax", for the words "under the preceding paragraph" in 1965.

The percentage was increased from "5.5 percent" to "7 percent" by the 1967 amendment.

For additional sections of Stats.1967, c. 963, relating to the purpose of the act, to the transfer of funds to replace loss of local revenues, to capital expenditures, and to the time when various provisions become operative, see Historical Note under § 6051.

The 1971 amendment provided that the rate of tax for years ending after December 31, 1971 be at the rate of 7.6% instead of 7%.

See, also, Derivation under § 23331.

Cross References

Unreported installment income, effect of cessation of business, see § 24672.

Law Review Commentaries

Background and effect of 1959 amendment (1959) 34 S.Bar J. 760.

Library References

Taxation 535. C.J.S. Taxation § 1078.

§ 23334. Certificate of payment or security for tax; necessity; procedure

No decree of dissolution shall be made and entered by any court, nor shall the county clerk of any county or the Secretary of State file any such decree, or file in the case of a credit union incorporated under the California Credit Union Law a certificate of election to dissolve or in the case of any other taxpayer any other document by which the term of existence of such taxpayer shall be reduced or terminated, nor shall the Secretary of State file any certificate of the surrender by a foreign corporation of its right to do intrastate business in this State unless the taxpayer obtains from the Franchise Tax Board and files with said court, county clerk or Secretary of State as the case may be, a certificate to the effect the Franchise Tax Board is satisfied from the available evidence that all taxes imposed by this chapter have been paid or are secured by bond, deposit or otherwise. Within 30 days after receiving a request for a certificate, the Franchise Tax Board shall either issue the certificate or notify the person requesting the certificate of the amount of tax that must be paid or the amount of bond, deposit or other security that must be furnished as a condition of issuing the certificate. The issuance of the certificate shall not relieve the taxpayer or any individual, bank, or corporation from liability for any taxes, penalties, or interest imposed by this part, nor shall the issuance of the certificate in the case of any credit union which revokes its election to wind up and dissolve, relieve such credit union of any taxes, or interest that would have been imposed under this part had such election not been filed.

(Added by Stats.1949, c. 557, p. 973, § 1. Amended by Stats.1951, c. 71, p. 269, § 1; Stats.1963, c. 1028, p. 2304, § 1, eff. June 26, 1963.)

Historical Note

The 1951 amendment substituted "Franchise Tax Board" for "commissioner".

The 1963 amendment inserted the provisions making distinctions in the case of credit unions, and, in the final sentence, substituted the word "part" for "chapter".

Derivation: Stats.1929, c. 13, p. 31, § 29; Stats.1933, c. 210, p. 703, § 11; Stats.1935, c. 275, p. 979, § 21; Stats.1937, c. 836, p. 2314, § 14; Stats.1939, c. 1050, p. 2987, § 17; Stats.1943, c. 37, p. 208, § 18; Stats.1943, c. 352, p. 1458, § 21; Stats.1947, c. 1468, p. 3043, § 1.

Forms

See West's California Code Forms, Revenue and Taxation.

Cross References

Action for involuntary dissolution brought by attorney general, necessity of certificate of satisfaction, see Corporation Code § 1800.
Decree of involuntary dissolution, see Corporations Code §§ 1808, 1809.
Nonprofit mutual benefit corporations,
Involuntary dissolution, see Corporations Code § 8519.
Voluntary dissolution, see Corporations Code § 8015.
Nonprofit public benefit corporations,
Involuntary dissolution, see Corporations Code § 6519.
Merger, see Corporations Code § 6014.
Voluntary dissolution, see Corporations Code § 6015.

Administrative Code References

Bond of corporation, form, see 11 Cal.Adm.Code 46(a).

Law Review Commentaries

Practical aspects of one-month liquidations. Lawrence F. Meyer (1974) 49 Los Angeles Bar Bull. 236.

Library References

Taxation ⇐528½. C.J.S. Taxation §§ 630, 1072, 1082.

Notes of Decisions

In general 1
Lien 2

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1. In general

Where bank ceased to do business and filed certificate of election to dissolve and banking permit was canceled, its decision to wind up became irrevocable on distribution of assets to shareholders, and for practical purposes bank was "dissolved", and its dissolution was "effective" within Stats.1929, p. 19, § 13(k) relieving bank from liability for subsequent franchise taxes, notwithstanding failure to file statutory certificate of dissolution. Bank of Alameda County v. McColgan (1945) 159 P.2d 31, 69 C.A.2d 464.

The Bank and Corporation Tax Act contains no ambiguity or uncertainty requiring franchise commissioner to adopt rule providing for certificate of tax payment to facilitate corporate dissolution, and such rule without legislative sanction did not aid commissioner in taxing bank which had been practically but not formally dissolved. Id.

2. Lien

Under California law, even though taxes are not fixed or payable until the assess-

ment has been made, such subsequent assessment does not create a lien but is only a step in its enforcement. U. S. v. Sampsell (C.C.A.1946) 153 F.2d 731.

Liens of the United States against bankrupt's estate for unpaid gasoline taxes were not entitled to priority in payment over the inchoate general liens of the state of California for franchise taxes which antedated the liens of the United States. Id.

The provision in Bank and Corporation Franchise Tax Act that tax lien is not removed until tax and penalty are paid or property sold for payment thereof did not preserve delinquent franchise tax lien which state lost under statute providing that deed to tax purchaser conveys title free of all encumbrances existing before sale, where such provision in the Act was modified before deed to purchaser by adding the language "or until the lien is released or otherwise extinguished." Connors v. Jerome (1948) 188 P.2d 770, 83 C.A.2d 830.

Article 9

AFFILIATED RAILROADS

Sec.

Article 9 was added by Stats.1949, c. 557, p. 973, § 1.

Cross References

Tax on preference income, application of this article, see § 23400.

§ 23361. Affiliated group; stock

"Affiliated group" means one or more chains of corporations connected through stock ownership with a common parent corporation if during the period when the income was accrued or realized and on the 16th day of the first month after the close of the income year—

(a) At least 80 percent of the stock of each of the corporations, except the common parent corporation, is owned directly by one or more of the other corporations; and

(b) The common parent corporation owns directly at least 80 percent of the stock of at least one of the other corporations; and

(c) Each of the corporations except the common parent corporation is either (1) a corporation whose principal business is that of a common carrier by railroad or (2) a corporation the assets of which

consist principally of stock in such corporations and which does not itself operate a business other than that of a common carrier by railroad. For the purpose of determining whether the principal business of a corporation is that of a common carrier by railroad, if a common carrier by railroad has leased its railroad properties and such properties are operated as such by another common carrier by railroad, the business of receiving rents for such railroad properties shall be considered as the business of a common carrier by railroad.

The provisions of this section shall not preclude the application of Chapter 17 (commencing with Section 25101) of this part.

Except in paragraph (c), "stock" does not include nonvoting stock which is limited and preferred as to dividends.

(Added by Stats.1949, c. 557, p. 973, § 1. Amended by Stats.1963, c. 193, p. 929, § 1; Stats.1969, c. 889, p. 1732, § 1.)

Historical Note

The 1963 amendment reduced the percentage in subpars. (a) and (b) to 80 from 95.

The 1969 amendment inserted the exception in the first sentence of subpar. (c) and added the second paragraph.

Derivation: Stats.1929, c. 13, p. 19, § 13½, added Stats.1937, c. 836, p. 2335, § 7, amended Stats.1945, c. 946, p. 1805, § 8.

Cross References

Taxability of corporation on distribution, see § 24853.5.

Library References

Taxation ⇐=880(1).
C.J.S. Taxation § 426.

Words and Phrases (Perm.Ed.)

United States Code Annotated

Federal income tax provisions, see 26 U.S.C.A. § 1504(a).

§ 23362. Consolidated return; conditions; member of group for fraction of year

An affiliated group, subject to the provisions of this article, shall have the privilege of making a consolidated return for the taxable year in lieu of separate returns. The making of a consolidated return shall be upon the condition that all the corporations, which have been members of the affiliated group at any time during the income year for which the return is made, consent to all regulations under Section 23363 prescribed prior to the making of such return and the making of a consolidated return shall be considered as such consent. In the case of a corporation, which is a member of the affiliated group for a fractional part of the income year, the consolidated return shall include the income of such corporation for such part of the income year

as it is a member of the affiliated group. In the case of a common parent company which is not itself a common carrier by railroad the consolidated return shall include on a consolidated-return basis only the income received from affiliates which are common carriers by railroad.

(Added by Stats.1949, c. 557, p. 974, § 1. Amended by Stats.1969, c. 889, p. 1732, § 2.)

Historical Note

The 1969 amendment added the last sentence.

Derivation: Stats.1929, c. 13, p. 19, § 13½, added Stats.1937, c. 836, p. 2335, § 7, amended Stats.1945, c. 946, p. 1805, § 8.

Library References

Taxation ⇐390(1). C.J.S. Taxation § 426.

United States Code Annotated

Federal income tax provisions, see 26 U.S.C.A. § 1501.

Notes of Decisions

1. In general

Bank and Corporation Franchise Tax Act does not permit consolidated returns by two carriers where one was not a common carrier by railroad or a corporation the assets of which consisted principally of stock in such carriers. 2 Ops. Atty.Gen. 94.

§ 23363. Regulations

The Franchise Tax Board shall prescribe such regulations as it may deem necessary in order that the tax liability of any affiliated group of corporations making a consolidated return and of each corporation in the group, both during and after the period of affiliation, may be determined, computed, assessed, collected, and adjusted in such manner as to reflect the proper income.

(Added by Stats.1949, c. 557, p. 974, § 1. Amended by Stats.1951, c. 71, p. 269, § 1; Stats.1951, c. 374, p. 1170, § 6, eff. May 9, 1951.)

Historical Note

The 1951 amendments stated that the "Franchise Tax Board", instead of the "commissioner", shall prescribe such regulations as "it", instead of "he", may deem necessary, etc.; and at the end of the section substituted "as to reflect the proper income" for "as clearly to reflect the income and to prevent evasion of just tax liability".

For provisions of Stats.1951, Chapter 374, relating to effective date, operative date and application, see Historical Note under § 23001.

Derivation: Stats.1929, c. 13, p. 19, § 13½, added Stats.1937, c. 836, p. 2335, § 7, amended Stats.1945, c. 946, p. 1805, § 8.

United States Code Annotated

Federal income tax provisions, see 26 U.S.C.A. § 1502.

§ 23364. Consolidated return; computation of tax; several liability; disaffiliation, effect

If a consolidated return is made subject to the provisions of this article, the tax imposed under this chapter shall be computed as a unit upon the consolidated net income of the group except as hereinafter provided. The parent corporation and each subsidiary, a member of the group during any part of a consolidated period, shall be severally liable for the tax, including any deficiency in respect thereof, computed upon the consolidated net income of the group. If a subsidiary by reason of a bona fide sale of stock for fair value has ceased to be a member of the affiliated group, its liability shall remain unchanged, except that if such cessation occurred prior to the date upon which any such deficiency is assessed, such deficiency, in the case of such former subsidiary, shall be reduced to an amount equal to such part as may be allocable to it upon the basis of the consolidated net income properly assignable to it. In no case, however, shall any demand for the payment of any deficiency be made, or any proceeding in court for the collection thereof be begun against such former subsidiary prior to the determination by the Franchise Tax Board that the amount of the deficiency cannot be collected from the parent corporation and the corporations, if any, remaining members of the affiliated group.

(Added by Stats.1949, c. 557, p. 974, § 1. Amended by Stats.1951, c. 71, p. 269, § 1.)

Historical Note

The 1951 amendment substituted "Franchise Tax Board" for "commissioner".

Derivation: Stats.1929, c. 13, p. 19, § 13½, added Stats.1937, c. 836, p. 2335, § 7, amended Stats.1945, c. 946, p. 1805, § 8.

Library References

Taxation ⇐390(1). C.J.S. Taxation § 426.

United States Code Annotated

Federal income tax provisions, see 26 U.S.C.A. § 1503.

§ 23364a. Group member commencing business; tax for taxable year of commencement

Where a member of an affiliated group filing a consolidated return is a corporation commencing to do business in this state for the first time after August 27, 1937, its tax for the taxable year of commencement shall be the tax for such year as provided for in subdivisions (a) and (b) of Section 23151.1.

(Added by Stats.1949, c. 557, p. 974a, § 1. Amended by Stats.1977, c. 552, § 19, eff. Sept. 3, 1977.)

Historical Note

The 1977 amendment substituted "its tax for the taxable year of commencement shall be the tax for such year as provided for in subdivisions (a) and (b) of Section 23151.1" for "its tax for its first and second taxable years shall be computed without regard to this article but in accordance with the provisions of Article 4 of this chapter. The tax of the remaining members of the group for the taxable year succeeding the year in which such corporation commenced to do business shall be computed as if such corporation were not a member of the affiliated group."

Derivation: Stats.1929, c. 13, p. 19, § 13½, added Stats.1937, c. 836, p. 2335, § 7, amended Stats.1945, c. 946, p. 1805, § 8.

Chapter 2.5

TAX ON PREFERENCE INCOME

Sec.

Chapter 2.5 was added by Stats.1971, Ex.Sess., c. 1, p. 5055, § 215, eff. Dec. 8, 1971.

Cross References

Declarations of estimated tax, see § 25441.
Income year, defined, see § 23042.
Taxable year, defined, see § 23041.
Taxpayer, defined, see § 23037.

§ 23400. Imposition and rate of tax; application of other sections

(a) In addition to the other taxes imposed by this part, there is hereby imposed for each taxable year (as defined in Section 23041), with respect to the income of every taxpayer under this part, a tax equal to 2.5 percent of the amount (if any) by which the sum of the items of tax preference in excess of thirty thousand dollars ($30,000) is greater than the sum of the amount of net loss for the income year.

(b) With respect to taxpayers subject to Article 4 of Chapter 2 (commencing with Section 23101) of this part, the provisions of Arti-

cles 4 to 9, inclusive, shall apply to the tax imposed by this section except that Section 23221 shall not apply.

(c) For the purposes of computing the tax on items of tax preference for taxable years in which a taxpayer commenced doing business, dissolves, withdraws, or ceases doing business, the provisions of Sections 23151, 23151.1, 23151.2, 23181, 23183, 23183.1, 23183.2, 23201 to 23204, inclusive, 23222 to 23224.5, inclusive, 23282, 23332.5, 23504 and 25401 shall be applied with due regard for the rate and tax preference amounts prescribed by this chapter.

(Added by Stats.1971, Ex.Sess., c. 1, p. 5055, § 215, eff. Dec. 8, 1971. Amended by Stats.1974, c. 744, p. 1649, § 7, eff. Sept. 18, 1974; Stats.1977, c. 552, § 20, eff. Sept. 3, 1977.)

Historical Note

Stats.1971, Ex.Sess., c. 1, p. 5131, § 317, governed the application of the increases in the bank and corporation tax rates to various fiscal years ending after Dec. 31, 1971. See Historical Note under § 23036.

Stats.1971, Ex.Sess., c. 1, p. 5131, § 317, provided in part:

"The operative effect of the provisions of this act shall be as follows: " * * * (j) Section 215 of this act shall apply to income years beginning after December 31, 1970, with respect to taxpayers subject to Chapter 2 of the Bank and Corporation Tax Law and to taxable years beginning after December 31, 1970, with respect to taxpayers subject to Chapters 3 and 4 of the Bank and Corporation Tax Law."

The 1974 amendment deleted, in subd. (c), the word "minimum" in the phrase "computing the minimum tax".

Section 22 of Stats.1974, c. 744, p. 1652, provided, in part: "* * * Sections 5 and 7 [amending § 23400] shall be applied with respect to taxable years beginning after December 31, 1974."

The 1977 amendment inserted, in subd. (c), "23151.2, 23183.1, 23183.2", deleted "23332" and substituted "23504 and 25401" for "23504 to 25401" in the list of sections.

An amendment of this section by Stats. 1978, 1st Ex.Sess., c. 1, § 18, eff. April 20, 1978, was repealed June 7, 1978 by Stats.1978, 1st Ex.Sess., c. 1, § 25. See Historical Note under Educ.C. § 41814.

Library References

Taxation ⇐955, 1061. C.J.S. Taxation §§ 1000, 1101.

Notes of Decisions

I. In general

Cumulative effect of taxes levied on banks does not result in tax in excess of maximum rate of 11.6% prescribed by § 23186. First City Bank v. Franchise Tax Bd. (1977) 139 Cal.Rptr. 12, 70 C.A.3d 444.

Imposition of tax on items of preference income of banks did not conflict with constitutional and statutory intent that tax on bank be according to or measured by net income; thus bank's constitutional rights were not violated by taxing portion of bad debt reserves exceeding actual bad debt losses and accelerated depreciation. Id.

§ 23401. Items of tax preference

For purposes of this chapter the items of tax preference are:

(a) With respect to each property as described in Section 1250(c) of the Internal Revenue Code as such provision read on April

Exhibit 3-1
SB 431
3/29/85
Rep Ellison

Amendments to SB431

1. Page 3, lines 5 through 6
   Following: Line 4
   Strike: "Subsection (b) in its entirety"
   Renumber: subsequent subsections

2. Page 5, line 15
   Following: "SUBSECTION"
   Strike: "(1)(C)"
   Insert: "(1)(A)"

3. Page 5, line 16 through 17
   Following: "INSERT:"
   Strike: Remainder of line 16 and all of line 17
   Insert: "(B) IT CONTAINS OVER 15 CONTIGUOUS ACRES UNDER ONE OWNERSHIP AND IS CAPABLE OF PRODUCING TIMBER OF COMMERCIAL QUALITY THAT CAN BE ECONOMICALLY HARVESTED IN COMMERCIAL QUANTITY."

Exhibit 4
SB 400
3/29/85
Rep Koehnke

Set No. 1

PROPOSED AMENDMENTS TO
S.B. 400
THIRD READING COPY

1. Page 4, line 4
   Following: "products"
   Insert: "or Montana wood or wood products"

2. Page 5, line 22
   Following: "products"
   Insert: "or Montana wood or wood products"

3. Page 9, line 13
   Following: "alcohol"
   Strike: "sold"
   Insert: "blended"

Set No. 2

PROPOSED AMENDMENTS TO
S.B. 400
THIRD READING COPY

1. Page 6, line 11
   Following: "1985,"
   Strike: "50"
   Insert: "70"

2. Page 6, line 12
   Following: "1987,"
   Strike: "30"
   Insert: "50"

3. Page 10, line 3
   Following: "effective"
   Strike: the remainder of line 3 through line 6
   Insert: "retroactively to April 1, 1985."

Set No. 3

PROPOSED AMENDMENTS TO
S.B. 400
THIRD READING COPY

1. Page 8, line 17
   Following: "EXCEED"
   Strike: "$1,300,000"
   Insert: "$1,000,000"

2. Page 8, line 24
   Following: "PAYMENT OF"
   Strike: "$1,300,000"
   Insert: "$1,000,000"

O.K.

Exhibit 5
HB 735
3/29/85
Harp

Amendments to HB 735, Introduced Bill

1. Page 1, Line 5:

Delete: ""AN ACT TO REALLOCATE FUNDS AMONG THE HIGHWAY PROGRAM, THE SCHOOL FOUNDATION PROGRAM, AND THE LOCAL GOVERNMENT BLOCK GRANT PROGRAM, TO RAISE THE MOTOR FUELS TAX RATE 3 CENTS PER GALLON EFFECTIVE JULY 1, 1985; TO PROVIDE AN APPROPRIATION TO THE LOCAL GOVERNMENT BLOCK GRANT PROGRAM; AMENDING SECTIONS 7-6-302, 15-70-204, 15-70-321, 20-9-343, AND 60-3-216, MCA, REPEALING SECTION 17-3-201, MCA; AND PROVIDING AN EFFECTIVE DATE.""

Insert: ""AN ACT TO RAISE THE MOTOR FUELS TAX RATE 3 CENTS PER GALLON EFFECTIVE JULY 1, 1985; AMENDING SECTIONS 15-70-204 AND 15-70-321, MCA; AND PROVIDING AN EFFECTIVE DATE.""

2. Page 2, Following Line 7:

Insert: "(4) Effective July 1, 1989, the gasoline license tax rate shall be reduced to 15 cents for each gallon of all other gasoline distributed by him within the state and upon which the gasoline license tax has not been paid by any other distributor."

3. Page 2, Line 9:

Following: "liquids."

Insert: "(1)"

4. Page 3, Lines 1 through 25:

Delete in their entirety.

5. Page 3, Line 1:

Insert: "(2) Effective July 1, 1989, the tax on diesel fuel and volatile liquids shall be reduced to 17 cents for each gallon of diesel fuel or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I."

6. Page 4, Lines 1 through 25:

Delete in their Entirety.

7. Page 5, Lines 1 through 25:

Delete in their entirety.

Harp

8. Page 6, Lines 1 through 10:

Delete in their entirety.

9. Page 6, Line 1:

Insert: "New Section. Section 3. All funds deposited in the highway special revenue account in the state special revenue fund shall be used exclusively for highway program purposes, except those funds appropriated for non-highway program current level operations only."

10. Page 6, Line 11:

Strike: "8"

Insert: "4"

Exh. 6 of 6
HB 392
3/29/85
Rep. Cohen

MEMORANDUM
TO: HOUSE TAXATION COMMITTEE
RE: HOUSE BILL 392

SUGGESTED AMENDMENTS TO HOUSE BILL 392:

1) PG., 2, LINE 6, STRIKE: 10%, INSERT: 5%.

2) PG. 3, STRIKE LINES 19 THROUGH 25.

3) PG. 3, LINES 19 THROUGH 23, INSERT:

(1) 25% TO BE DIVIDED AS FOLLOWS:

(A) $50,000 TO THE DEPARTMENT OF REVENUE FOR THE PURPOSES OF ADMINISTERING THIS ACT.

(B) THE BALANCE TO THE DEPARTMENT OF COMMERCE FOR MONTANA TRAVEL PROMOTION PURPOSES AND TO THE STATE GENERAL FUND.

4) PG. 4, STRIKE LINES 1 AND 2.

5) PG. 4, LINE 3, STRIKE: 30%, INSERT: 20%

ACCORDING TO THE FISCAL NOTE PREPARED FOR A SIMILAR BILL, A 5% STATEWIDE HOTEL MOTEL TAX WILL GENERATE $17,234,126 DURING THE NEXT BIENNIUM. CITIES, TOWNS AND COUNTIES WILL RECEIVE $8,617,063 IN COLLECTIONS RETURNED TO THE POINT OF ORIGIN. THEY WILL RECEIVE $4,308,531 THROUGH THE GENERAL DISTRIBUTION FORMULA. THE TOTAL LOCAL GOVERNMENT SHARE WILL $12,925,594.

THE STATE SHARE WILL BE $4,308,531, WHICH INCLUDES THE $100,000 FOR ADMINISTRATION.

THE STATE SHARE OF THE PROCEEDS OF THE PROPOSED TAX WILL COVER THE RECOMMENDED $1.89-MILLION GENERAL FUND APPROPRIATION TO THE TRAVEL PROMOTION UNIT, AND LEAVE A BALANCE OF $2.42-MILLION.

THIS BILL REPRESENTS A FAIR AND LOGICAL METHOD OF GENERATING CRITICALLY NEEDED REVENUES FOR STATE AND LOCAL GOVERNMENTS WITHOUT IMPOSING A GENERAL TAX INCREASE.

A STUDY CONDUCTED BY THE BUREAU OF BUSINESS AND ECONOMIC RESEARCH AT THE UNIVERSITY OF MONTANA (TABLE 1) INDICATES THAT NON-RESIDENTS ACCOUNTED FOR $423-MILLION OF THE TOTAL $814-MILLION CASH RECEIPTS OF THE MONTANA TRAVEL INDUSTRY IN 1983. ACCORDING TO THIS STUDY, OUT-OF-STATERS ACCOUNTED FOR 52 PERCENT OF THE TRAVEL EXPENDITURES IN MONTANA FOR THAT YEAR.

THE STUDY ALSO BROKE DOWN NON-RESIDENT TRAVEL EXPENDITURES BY CATEGORIES (TABLE 9). THIS ANALYSIS SHOWS THAT 23.1 PERCENT OF TOTAL EXPENDITURES WAS FOR HOTEL-MOTEL ROOMS AND 1.7 PERCENT WAS FOR CAMPGROUNDS. ACCOMODATIONS REPRESENTED 24.8 PERCENT OF NON-RESIDENT TRAVEL EXPENDITURES. WHEN THIS PERCENTAGE IS APPLIED AGAINST TOTAL OUT-OF-STATE TRAVEL RECEIPTS, IT SHOWS THAT NON-RESIDENT EXPENDITURES FOR HOTELS, MOTELS AND CAMPGROUNDS WAS $105-MILLION. A FIVE PERCENT TAX LEVIED AGAINST THIS TOTAL WOULD HAVE GENERATED $5.25-MILLION IN 1983. THIS IS 53.3 PERCENT OF REVENUES PROJECTED UNDER THIS BILL IN FISCAL YEAR 1987.

THESE STATISTICS INDICATE THAT A MAJORITY OF THE REVENUE FROM A STATEWIDE HOTEL-MOTEL TAX WOULD BE COLLECTED FROM OUT-OF-STATE TRAVELLERS. THIS BILL IS A LEGITIMATE METHOD OF IMPORTING TAX DOLLARS TO MONTANA. THESE ADVANTAGES ARE RECOGNIZED ACROSS THE COUNTRY AND THIS IS ONE OF THE FEW STATES THAT DOES NOT TAX NON-RESIDENT TRAVELLERS.

LESS THAN HALF OF THE PROCEEDS OF THIS TAX WOULD BE COLLECTED FROM MONTANANS. IT IS FAIR TO ASSUME THAT A SIGNIFICANT PORTION OF IN-STATE EXPENDITURES WOULD COME FROM BUSINESS TRAVEL, WHICH IS GENERALLY REIMBURSIBLE.

THIS BILL WILL GENERATE REVENUES FOR LOCAL GOVERNMENTS THAT CAN BE USED TO REPLACE OVER EXTENDED PROPERTY TAX MILL LEVIES. IT WILL PROVIDE AN ADDITIONAL $4.3-MILLION TO THE STATE, WHICH IS ALMOST 10 PERCENT OF THE PROJECTED GENERAL FUND DEFICIT. MOST IMPORTANTLY, THE MAJORITY OF THIS REVENUE WILL COME FROM NON-RESIDENTS AND BUSINESS TRAVELLERS WHO PAY SIMILAR TAXES IN VIRTUALLY EVERY OTHER STATE IN THE NATION.

AN ACCOMODATIONS TAX IS LEGITIMATE, BECAUSE THE MORE THAN 2 MILLION NON-RESIDENT TRAVELLERS THAT VISIT THE STATE EACH YEAR EXERT PRESSURE ON LOCAL SERVICES. TRAVEL CENTERS, CITIES AND TOWNS LIKE WEST YELLOWSTONE, WHITEFISH, BOZEMAN AND MISSOULA, HAVE HIGHER PER CAPITA COSTS FOR SERVICES BECAUSE OF THE IMPACT OF THE TOURIST INDUSTRY. THESE CITIES ARE PROVIDING SERVICES AND MAINTAINING FACILITIES THAT ARE REQUIRED BY THE TRAVEL INDUSTRY, BUT THEY RECEIVE NO DIRECT TAX BENEFITS.

IN 1982, THE BUREAU OF BUSINESS AND ECONOMIC RESEARCH CONDUCTED A POLL OF PUBLIC OPINION IN MONTANA ON A BROAD RANGE OF TAXATION ISSUES. THE SURVEY ASKED PEOPLE ACROSS THE STATE TO IDENTIFY THE LEAST ACCEPTABLE METHOD OF INCREASING GOVERNMENT REVENUES (TABLE 8). AN OVERWHELMING MAJORITY OF 84 PERCENT LISTED INCREASED PROPERTY TAXES AS THE LEAST ACCEPTABLE OPTION. A MINORITY OF 39 PERCENT EXPRESSED OPPOSITION TO A HOTEL-MOTEL TAX.

IF CITIES, TOWNS AND COUNTIES ARE NOT PROVIDED WITH FINANCING ALTERNATIVES, CONTINUALLY INCREASING MILL LEVIES WILL BE NECESSARY TO MAINTAIN THE OVER-LOADED AND STATIC PROPERTY TAX SYSTEM. HB-392 IS AN ALTERNATIVE. IT WILL GENERATE DESPERATELY NEEDED REVENUES THROUGH A TAX IMPOSED PRIMARILY ON OUT-OF-STATERS AND BUSINESS TRAVELLERS. ACCORDING TO MONTANA PUBLIC OPINION, THIS IS MORE ACCEPTABLE THAN INCREASING PROPERTY TAXES LEVIED AGAINST BUSINESSES, HOMES, FARMS AND RANCHES LOCATED 100 PERCENT IN THIS STATE.

VISITOR'S REGISTER

HOUSE TAXATION COMMITTEE

BILL HB 948 DATE March 29, 1985 P.M.

SPONSOR Representative Fritz

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOSE
Pat Hooks	Townsend	Mont Ass'n of Shriners Inc.		✓
Ron Lindgren	Helena	"		✓
Bob Murdo	Helena	D.A. Davidson & Co.		✓
E. Reilly	Helena	Mont. Senior Citizens	✓	
Paul Carpino	Helena	Montana Low Income Assn	✓	
Jane Bryan	Helena	M.S.C.A.	✓	
Don Judge	Helena	Mt. Chamber of Commerce		✓
Dennis Burr	Clancy	Montana		✓
Don Judge	Helena	Mt State AFL-CIO	✓	
Jon Tinsley	Helena	Mt. Consumer Finance Assn		✓
Gary D Anderson	Helena	Self		X
George Allen	Helena	Mt. Retail Assn		✓

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

FORM CS-33

VISITOR'S REGISTER

HOUSE TAXATION COMMITTEE

BILL HB 826 DATE March 29, 1985

SPONSOR Representative Ellerd

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE
Riley Johnson	Helena		X	
Libby Smith	Helena			X
Gene Race	Helena	Mt. Credit Unions League		X
Norma Burn	Clancy	Montax		✓
Don Judge	Helena	MT STATE AFL-CIO		X
Kurt Wellulis	W. Yellowstone	Town of West	X	
Clyde Duncan	" "	" "	X	
Bob JACKLIN	W YELLOWSTONE	" "	X	
Walter Hennan	WY MT	-	X	
Alec Hansen	Helena	MLCT	X	
Sam Bryan	Helena	M.S.C.A.		+
~~Doug Dickinson~~	✓	~~Self~~		
Carl Boyd	Senate Post	39 Bozeman	X	
Joan Schoder	West Yellowstone	Chamber of Commerce	X	
Curtis L Nelson	West Yellowstone	West Associates, Inc.	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

FORM CS-33