BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
HOWARD AUTOMOBILE COMPANY OF)
LOS ANGELES)

Appearances:

For Appellant: Orville R. Vaughn of San Francisco

For Respondent: A. A. Manship, Franchise Tax Commissioner

O P I N I O N

This is an appeal under Section 25 of the Bank and Corporation Franchise Tax Act (Chapter 13, Statutes 1929) from the action of the Franchise Tax Commissioner in overruling the protest of Howard Automobile Company of Los Angeles against a proposed assessment of an additional tax of $2,636.49 based upon the return of said corporation for the year ended December 31, 1928. Two points are urged on appeal, viz., that the Commissioner erred in including as taxable income:

1. Interest received from obligations and instrumentalities of the United States, and

2. Net income allocated to the State of Nevada by the Appellant on the basis of gross sales alleged to have been made there.

So far as the first item above enumerated is concerned, for the reasons set forth in the opinion of the Board in the case of Vortox Manufacturing Company (filed August 4, 1930) and in view of the recent decision of the Supreme Court of this State in the case of The Pacific Co. Ltd. v. Johnson, 81 Cal. Dec. 51[illegible] holding the Act constitutional as against a similar objection, we believe that the action of the Commissioner to include such income must be sustained. Inasmuch as the income involved in the first point on appeal is $65,009.78, as a practical matter the major portion of the amount at issue has been covered. However; there remains for consideration the inclusion by the Commissioner of $902.63 claimed to have been net income subject to allocation to the State of Nevada on the basis of gross sales made there. We have already had occasion in numerous other appeals to refer to the provisions of Section 10 of the Act requiring the allocation of the net income of the corporation in the event that its entire business is not done within this State and for that reason will not attempt an extended analysis of its language here. It will suffice to say that if the Appellant is correct in its contention that the sales were made in Nevada then it is entitled to the allocation claimed.

Appeal of Howard Automobile Company of Los Angeles

There is no controversy as to the facts. The Appellant is an automobile distributor and the sales were made to its dealer at Las Vegas, Nevada, in the following manner:

The automobiles which were the subject matter of the sales were shipped from Flint, Michigan, to Las Vegas, Nevada. Order bills of lading covering the shipments, together with drafts for the purchase price, were sent by the manufacturer to the taxpayer's bank at San Francisco. The taxpayer paid the drafts and thereupon the bank, in whose favor the order bills of lading were issued, endorsed them and delivered them to the taxpayer wh then endorsed the bills of lading and forwarded them, together with drafts drawn upon the dealer at Las Vegas to a bank in that city with instructions to deliver the bills of lading upon payment of the drafts. The Las Vegas bank then collected the drafts and delivered the bills of lading to the dealer.

From these facts we believe that we are warranted in concluding that the title to the automobiles which were the subject matter of the sales did not pass from Howard Automobile Company of Los Angeles to the dealer until the bills of lading were delivered by the bank in Las Vegas.

++A sale is deemed to be made at the place where it is executed by a transfer of the property in the goods from the seller to the buyer,++ (35 Cyc. 94).

In 5 Elliott on Contracts, page 1176, comment upon shipments covered by bills of lading issued to the order of the seller or his agent is made as follows:

"Where goods are shipped, and by the bill of lading the goods are deliverable by the order of the seller or his agent, the seller is prima facie deemed to reserve the right of disposal. And the attaching of a draft for the purchase price to the bill of lading usually strengthens or corroborates the inference that the title was not intended to pass at the time of delivery to the carrier.++

However, in the instant case the Commissioner states that the fact that the Appellant filed its order for automobiles by putting an outside manufacturer in touch with its dealer was merely incidental to the business of the Appellant in this State which was the procurement of sales orders in the form of sales contracts and that the only legal existence that the Appellant had is in the State of California. It seems to us clear none the less that the Appellant did not complete the sale in question 'in California. The manufacturer in Michigan required the Appellant as a distributor to make an agreement with the dealer in a form prescribed by the manufacturer and among other provisions in this agreement was one to the effect that it should not be valid until and unless approved by the general sales manager or other duly authorized executive officer of the manufacturer. Under these circumstances, it appears that the contract of sale did not come into existence until it was approved by the manufacturer. This approval was not given in

California but in Michigan.

Therefore, we believe that it can not be maintained accurately that the sales contract was consummated in California. The sale took place pursuant to an agreement between a resident of Nevada and a resident of California brought into legal existence through the act of a corporation in Michigan. The automobiles were delivered in Nevada and the title did not pass until the dealer paid for them there. From these circumstances we conclude that the taxpayer was warranted in classifying the sale as an out-of-state transaction and in claiming allocation accordingly.

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that the action of the Franchise Tax Commissioner in overruling the protest of Howard Automobile Company of Los Angeles, a corporation, against a proposed assessment of an additional tax of $2,636.49, based upon the net income of said corporation for the year ended December 31, 1928, be and the same is hereby modified. Said Commissioner is hereby directed to permit the allocation to the State of Nevada of the net income of $902.63, and to compute the tax accordingly, sending the taxpayer a revised notice in conformity with the views of the Board.

Done at Sacramento, California, this 15th day of May, 1931, by the State Board of Equalization.

Jno. C. Corbett, Chairman
R. E. Collins, Member
Fred E. Stewart, Member
H. G. Cattell, Member

ATTEST: Dixwell L. Pierce, Secretary