BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
AMERICAN ENGRAVING AND COLOR PLATE CO.)

Appearances:

For Appellant: H. J. Griffith, President of said corporation
For Respondent: Albert A. Manship, Franchise Tax Commissio

O P I N I O N

This is an appeal pursuant to Section 25 of the California Bank and Corporation Franchise Tax Act (Chapter 13, Statutes of 1929), from the action of the Franchise Tax Commissioner in overruling the protest of American Engraving and Color Plate Co. against a proposed assessment of an additional tax in the amount of $929.38 based upon its return for the year ended December 31, 1928.

The sole point involved is whether or not the Appellant is entitled to the allocation of some of its net income as attributable to business done outside of this State under the basis of allocation prescribed by Section 10 of the Act.

The facts are not controverted, The corporation is organized under the laws of Nevada but maintains its principal offic and plant in San Francisco where it is engaged in photo engraving and electrotyping. Less than one-third of the total gross sales arising out of this business in 1928 were to customers in California but the Commissioner has taken the position that all of the sales must be regarded as California business, assigning as his reason that "a corporation which maintains an office or place of business within the state, and not elsewhere, is taxable on the basis of its net income as defined in the Franchise Tax Act."

We have already had occasion to comment upon such a test or rule in our opinion in the matter of the Appeal of J. S. Garnett Co. (filed February 24, 1931) and deem it unnecessary to repeat what was said therein. It is sufficient to observe that such a test cannot afford infallible guidance in determining whether or not a corporation has done business outside of California. Therefore, it, devolves upon us to examine the nature of the sales made by the Appellant in order to determine whether or not they were California business.

Although the corporation maintains an "office" in Nevada, because of its domicile there it was conceded at the hearing that the business transacted from this office is nominal and that for practical commercial purposes the San Francisco office

is the one out of which the company's business is handled. It appears that most of the work done by the Appellant is the result of solicitation of the customers through individual salesmen who go from the California office into other states. The President of the corporation, himself, frequently takes orders outside of California and almost without exception the salesmen have full authority to enter into contracts for work binding upon the corporation without submitting the orders to the San Francisco office for approval. Almost invariably these orders are filled from the San Francsco plant of the Appellant. They are shipped directly from there to the customers who remit under the terms of their contracts to the company at San Francisco. The crux of the question before us for decision, then, is whether the entire business of the corporation is done within this State or if the fact that these sales are consummated in the manner above described requires the conclusion that a portion of its business is done outside of California.

From the foregoing review of the facts it is apparent that the business of the Appellant is largely interstate commerce originating in California and that there is no strictly intrastate business done elsewhere. Thus, it becomes necessary to determine whether or not such interstate business constitute; business done within this State so far as the application of Section 10 of the Act is concerned.

It was declared in the case of United States Glue Company v. Oak Creek, 153 N.E. 241 (Wisconsin) that the fact that goods manufactured in Wisconsin should be sold outside of that state did not necessarily mean that the source of the income was not within the state. The glue company maintained its factory in Wisconsin and had its place of business there. Its product was shipped and delivered on sales made at home and outside of Wisconsin. The Supreme Court of the state held that the manufacturing of the product and the management and conduct of business of the company at its home office in the state were controlling factors in the process of disposing of its goods and since this constituted the source out of which the income issued that income should have situs within Wisconsin for the purposes of taxation. It was clear that a substantial part of the income of the company was derived from interstate commerce but upon appeal of the case to the United States Supreme Court (247 U.S. 321), the court did not disturb the finding that sales to outside customers of goods delivered from its Wisconsin factory were 'Wisconsin business and held that there was no violation of the commerce clause of the Federal Constitution through the subjection of the income from such transactions to the operation of the Wisconsin tax. A similar result was reached by the same court in upholding the action of the State of Illinois in treating interstate business originating in that as Illinois business for the purposes of taxation (Western Cartridge Co. v. Emmerson, 50 sup. ct. 383).

From a consideration of these authorities we are drawn to the conclusion that interstate business of the character in

question on this appeal has been regarded by the courts as business done within the state of its origin for the purposes of a tax of this kind. This interpretation of the law appears to have become so well fixed that we feel compelled to decide that the Appellant is not entitled to any allocation under our law much as we may be individually impressed by the hardships to which allusion has been made in the presentation of this appeal. Under the authorities all of the business of American Engraving and Color Plate Co. would be California business, notwithstanding the interstate character of a substantial portion of it.

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 American Engraving and Color Plate Co., a corporation, against a proposed assessment of an additional tax in the amount of $929.38, based upon the return of said corporation for the year ended December 31. 1928, under Chapter 13, Statutes of 1929, be and the same is hereby sustained.

Done at Sacramento, California, this 1st day of December, 1931, by the State Board of Equalization.

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

ATTEST: Dixwell L. Pierce, Secretary