



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of
SPICER AND COMPANY

Appearances:

For Appellant: Leland Stanford, Certified Public Accountant

For Respondent: Chas. J. McColgan, Franchise Tax Commissioner

This is an appeal under Section 25 of the Bank and Corporation Franchise Tax Act (statutes of 1929, Chapter 13, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of Spicer and Company against a proposed assessment of an additional tax in the amount of \$33.84, with interest, based upon the Appellant's return for the year ended December 31, 1929.

The sole point involved in this appeal is whether all of the income of the Appellant for 1929 was income from business done within this State, as maintained by the Franchise Tax Commissioner, or whether some of its income was from business done outside of the state, and hence subject to allocation, as claimed by the Appellant under Section 10 of the Bank and Corporation Franchise Tax Act which provides:

"If the entire business of the bank or corporation is done within this State, the tax shall be according to or measured by its entire net income; and if the entire business of such bank or corporation is not done within this State, the tax shall be according to or measured by that portion thereof which is derived from business done within this State. The portion of net income derived from business done within this State, shall be determined by an allocation upon the basis of sales, purchases, expenses of manufacturer, pay roll, value and situs of tangible property, or by reference to these or other factors, or by such other method of allocation as is fairly calculated to assign to the State the portion of net income reasonably attributable to the business done within this State and to avoid subjecting the taxpayer to double taxation."

The Appellant claims that in addition to its principal office in California it maintains branch offices outside of

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the state and that a portion of its income for 1929 was from business done by these branch offices.

The Commissioner did not file a brief inasmuch as he states that for the decision of the appeal it is necessary only that

"some clear-cut and specific statement should be submitted by taxpayer, setting forth the scope and nature of the agencies which it maintains are operated by it outside of the State of California, and an exposition made of the methods of handling the sales, collection of accounts, etc. as between the main office and such alleged branches."

It is conceded by the Commissioner that our decision of the appeal must be based on our findings as to the maintenance of branch offices outside the state, the nature of such offices and the nature of the relations existing between the main office in California and such branch offices.

With respect to its branch offices, the Appellant submitted under oath the following statement:

"The offices outside of California are separate and distinct branches. They carry their own stock of merchandise, employ their own help, make their own sales, render the invoices and collect the money. The business at the branches is not negotiated, consummated nor effected in behalf of the taxpayer by agents or agencies chiefly situated at, connected with, or sent out from premises for the transaction of business owned or rented by the taxpayer situated within the state.

"The sales are not consummated as the result of orders received through the mails or arranged by telegram or other similar mode of communication, originating or terminating at a corporate domicile within this State.

sales for 1929 were as follows:

Chicago office
Philadelphia
Portland
Kansas City
Dallas
Atlanta
Glendale, Calif.

We are of the belief that the above quoted statement, and other evidence adduced at an oral hearing of the instant

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appeal, warrants our holding that a portion of Appellant's income for the year 1929 was from business done outside the State, and, consequently, a portion of it was subject to allocation under Section 10 of the Act above quoted.

ORDER

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 Spicer and Company, a corporation, against a proposer. additional assessme'nt in the amount of \$33.84 based upon the return of said corporation for the year ended December 31, 1929, under Chapter 13, Statutes of 1929, be and the same is hereby reversed. Said ruling is hereby set aside and said Commissioner is hereby directed to proceed in conformity with this order.

Done at Sacramento, California, this 20th day of April, 1932, by the State Board of Equalization.

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

ATTEST: Dixwell L. Pierce, Secretary