



OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
 GREAT WESTERN ELECTRO CHEMICAL COMPANY)

Appearances:

For Appellant: Mr. Fred Bullock, Certified Public
 Accountant of Bullock and Kellogg,
 and Mr. G. W. Schedler, General Manager
 of Appellant

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

OP IN1 ON

This is an appeal pursuant to Section 25 of the Bank and Corporation Franchise Tax Act (Chap. 13, Stats. 1929, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of Great Western **Electro** Chemical Company, a corporation, to a proposed assessment of an additional tax in the amount of \$3,534.06 based upon its return for the year ended December 31, 1929.

It appears that Appellant, a California corporation, is engaged in the manufacture and the sale of chemicals. Its factory and principal place of business are located here, and its products are sold to customers in California, other states, and foreign countries. Of its tangible property 98.21% was located here as of December 31, 1929 and 99.06% of its payroll for the year 1929 was attributable to California. The following excerpt from Appellant's supplemental brief, it is believed, fairly classifies and describes the nature of Appellant's sales for the year;

"(a) Intrastate sales in California.

(b) Sales from stock warehoused in El Paso.

These sales of stock warehoused in El Paso, Texas, are made by a broker who has authority to and does complete sales without reference to the home office and issues an order on the warehouse for delivery of goods.

(c) Sales of goods manufactured outside of California and shipped to customers outside of California upon orders either taken by salesmen outside of California or received by mail from customers,

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This merchandise which consists largely of fertilizers is shipped directly from South America to the Hawaiian Islands.

- (d) Sales made through agents traveling as direct employees.

This classification of business represents sales made by agents who travel throughout the different states of the Union, and includes sales made through a sales agency in New York City. In most instances these agents have authority to and do bind the company in the execution of sales contracts.

- (e) Sales made by company officials or by agents outside of the State of California.

This class of business which represents the principal business of the company consists of shipments into the states of Oregon and Washington.

The sales contracts which frequently cover a period of a number of years are usually executed by officials of the company traveling out of the head office in San Francisco. In connection with this business the company maintains a sales office in the City of Seattle from which its representatives constantly contact the customers with whom business is done.

- (f) Sales received by mail, telegraph, etc., at the head office in California and shipped directly from **fractory** in California,"

In its return for the year ended December 31, 1929, Appellant allocated a portion of its income to business done without the State. The Commissioner disallowed the allocation and proposed the additional assessment in question.

Section 10 of the Act provides that

"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 question thus presented for determination is whether or not the entire business of Appellant was done within the state. A similar question was presented for our determination by the appeal of the same corporation involved herein from the

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action of the Commissioner in overruling its protest to a proposed assessment of an additional tax for the year 1929, based upon its return for the taxable year ended December 31, 1928. In that appeal it appeared that all of Appellant's tangible property was located here and 99.04% of its payroll was attributable to **this** State. The types of sales involved were practically identical with the types involved in the instant appeal with the exception that no reference was made to sales of the character described under (b) above. In our opinion rendered December 14, 1931, we concluded, largely upon the authority of the case of U. S. Glue Co. vs. Oak Creek, 153 N. W. 241, 247 U. S. 321, that the business of Appellant should be regarded as being done entirely within the state within the meaning of Section 10 of the Act, and that consequently the tax was properly measured by Appellant's entire net income.

This decision we **think** is controlling in the instant appeal and we must hold that the Commissioner acted properly in disallowing an allocation of any portion of Appellant's net income to business done without the state unless a different result is to be reached on account of the sales described under (b) above. These sales it will be remembered consisted of sales of stock warehoused outside the state and consummated by brokers located outside the state. The question thus remaining for **determination** is whether Appellant by virtue of these sales can be regarded as doing business outside of the state.

In this connection we think it pertinent to refer to the case of Southern Cotton Oil Co. vs. Roberts, 25 N. Y. App. Div. 13, in which it was held that a foreign corporation which sent goods and a commission merchant in New York, who sold the goods and deposited the proceeds to the credit of the corporation in a bank in New York, was not doing business in New York so as to be subject to a franchise tax imposed by that state on corporations doing business in New York. In the course of its opinion, the court expressed itself as follows:

"The goods consigned to the commission merchants were in their possession and control, and their disposition in accordance with the directions of the relator was a part of their business, not the business of the relator....It should not, I think, be held that the consignment of goods by a non-resident manufacturer to a resident commission merchant for cash sales constitutes a doing of business by the manufacturer within this state... In this view of the character and effect of the dealings between the relator and... (the commission merchant), coupled with the fact that the relator has here no office or place of business, the conclusion is reached that the relator was not subject to the tax in question."

In view of this case it would seem that Appellant cannot be regarded as doing business in the state in which the broker made the sales in question. It follows that Appellant's business must be regarded as being done entirely within the state and

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and that we must hold that the Commissioner acted properly in proposing the additional assessment in question.

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 Charles J. **McColgan**, Franchise Tax Commissioner, in overruling the protest of Great Western **Electro** Chemical Company, a **corpo-**ration, against a proposed assessment of an additional tax in the amount of **\$3,534.06** based upon the return of said corporation for the year ended December 31, 1929, pursuant to Chapter 13, Statutes of 1929, as amended, be and the same is hereby sustained

Done at Sacramento. California. this 24th **day** of April, 1934, by the State Board of Equalization.

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

ATTEST: Dixwell L. Pierce, Secretary