

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA



In the Matter of the Appeal of)
K. HOVDEN COMPANY)

Appearances:

For Appellant: Fred Bullock, Certified Public Accountant
of Bullock and Kellogg; William Lundy,
Secretary-Treasurer of Appellant
For Respondent: Chas. J. McColgan, Franchise Tax Commissioner

O P I N I O N

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 K. Hovden Company, a corporation, to a proposed assessment of an additional tax in the amount of \$1,244.87 based upon its return for the year ended December 31, 1929.

It appears that Appellant, a California corporation, was engaged, during the year 1929, in fish canning operations at Monterey and San Diego, California, and that it disposed of its products to customers in California, other states and foreign countries. Of its tangible property 92.22% was located here and 94.57% of its payroll for the year 1929 was attributable to California. Its sales for the year have been classified and described by Appellant as follows:

(a) Intrastate sales within California.

(b) Interstate sales from stock warehoused in its own name in many different states.

These sales are made in the main by brokers who have authority to and do complete the sales without reference to the home office and issue an order on the warehouse for the delivery of the goods. Invoices are prepared by the brokers and in most instances collections are made by them. Brokers are compensated on a commission basis. In infrequent instances orders may be made by agents or received by mail at the head office and filled out of warehouse stock located in other states. Property taxes are paid to the local jurisdiction on warehouse stock.

(c) Interstate sales made through brokers located in cities where warehouse stocks are not maintained.

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In most instances goods are shipped from factories in California direct to customers although in infrequent instances shipments are made from out of state warehouse stock. These brokers have authority to, and do execute contracts on behalf of the taxpayer, both as to price and credit.

(d) Interstate sales made through agents traveling as direct employees.

In most instances goods so sold are shipped direct from California factories. These agents bind the company both as to credit and price.

(e) Interstate sales received by mail, telegraph, etc., at the head office in California and shipped directly from California factories.

In infrequent instances such orders may be filled from foreign warehouse stock.

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 our determination is whether or not the entire business of Appellant was done within the state. A similar question was presented for our determination in the appeals of Great Western **Electro** Chemical Company from the action of the Commissioner in overruling its protests to proposed assessments of additional tax based upon its returns for the years 1928, 1929, and 1930, respectively.

In the first of these appeals, decided by us on December 14, 1931, we held that a corporation having its factory, principal place of business, and most of its property and payroll here, and which made sales of the type **involved** herein, with the exception of sales of the character described under (b) and (c) above, was not doing business outside the state, and that consequently, the tax should be measured by the corporation's entire net income. In the other two appeals, this day decided by us, we held that the corporation was not to be regarded as doing business outside the state on account of sales of the type described under (b) and (c) above, i.e., sales consummated through brokers located outside of the state.

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These decisions we think are controlling in the instant appeal and necessitate our holding that the Appellant was not doing business outside the state during the year 1929 and that consequently the tax should be measured by its entire net income for said year.

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 K. Hovden Company, a corporation, against a proposed assessment of an additional tax in the amount of **\$1,244.87** 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
John C. Corbett, Member
H. G. **Cattell**, Member

ATTEST: **Dixwell L. Pierce**, Secretary