

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA



In the Matter of the Appeals of)
ROCKGAS UTILITIES COMPANY, LTD.,)
and IMPERIAL GAS COMPANY)

Appearances:

For Appellants: C. L. Kerr, Treasurer of Appellant
Corporations

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

O P I N I O N

These are appeals from the action of the Franchise Tax Commissioner in overruling the protests of Qockgas Utilities Company, Ltd., and Imperial Gas Company, to proposed assessments of additional taxes for the year 1932 based upon their returns for the year ended December 31, 1931. The amounts of the proposed additional assessments involved are as follows:

Qockgas Utilities Company, Ltd.	- \$ 87.70
Imperial Gas Company	165.52

Inasmuch as the problems presented for the determination of this Board by the above appeals are of the same general character in both cases and inasmuch as both of the above appellants were represented by the same party, we have considered the proceedings as a consolidated appeal.

The only question involved in these appeals is whether the business of Appellants for the year 1931 was done entirely within the state, in which case the tax for the year 1932 should be measured by the entire net income as proposed by the Commissioner, or whether a portion of their business for said year was done without the state, in which case a portion of the income should be allocated to business done without the state and not included in the measure of the tax.

It appears that during the year 1931 Appellants were engaged in the business of marketing liquified natural gas confined in steel portable tanks or cylinders under high pressure which, when installed and released, reverts to vapor form and is used for heating, lighting and cooking, the same as ordinary gas. Although the gas in the containers was sold by appellants, the containers and other equipment necessary for its use were not sold but were leased for a nominal rental to the consumers of the

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gas for such a time as they continued to be customers of appellants.

During the year 1931, appellants' customers were located both within and without the state and were **contacted largely** through the activities of agents working on a **comission** basis. In all cases, the gas, containers and other equipment were shipped to the customers from points in this state.

Appellants contend that their activities in obtaining customers located outside the state, and in selling them gas, and in leasing them the necessary equipment for its use constituted doing business outside the state and that that portion of their income for the year 1931 which was attributable to such activities outside the state should not be included in the measure of the tax.

It does not appear however that appellants either qualified to do business, or maintained offices, outside the state. Furthermore, it does not appear that they made any investments of capital without the state other than the investments represented by the equipment leased to out of the state consumers.

Under these circumstances, we are of the opinion that **our** decision in the instant appeals is controlled by our decision in the Appeal of Great Western **Electro Chemical Co., delivered** on December 14, 1931, and in the Appeal of Kasser **Egg Process co., delivered** on March 14, 1933.

In the first of these **appeals**, we held that a company, with its factory and principal **place** of business here, which did not qualify to do business and which maintained no offices outside the state was not doing business without the state, although it made sales of its products to customers located outside the state pursuant to orders taken by travelling **salesman** operating without the state. This decision was arrived at largely on the authority of U.S. Glue Co. vs. Oak Creek, 153 N.W. 241, 247 U.S. 321.

In the second mentioned appeal, we held that a company which manufactured machines in this state and which leased them to persons and corporations in various other states and foreign countries was not doing business outside of California. In the course of our opinion, we expressed ourselves as follows:

"While it is true that income was derived by Appellant from the operation of machines located outside of the state, the machines were operated not by the appellant but by others to whom the machines were leased. The ownership of property located outside of the state obviously does not in itself constitute doing business outside of the state. In this view of the matter, coupled with the fact that appellant maintains no office

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"or place of- business outside the state and has not qualified to do business in any of the states in which its machines are located, we are of the opinion that appellant cannot be considered as having engaged in business outside of the state. Our conclusion, we think, is amply supported by the case of State v. American Refrigerator Transit Co., 151 Ark. 581, 237 S.W. 78, in which it was held that a corporation which leased private refrigerator cars to a railroad company which used them in a certain state was not doing business in that state, and by the case of Savage v. Atlanta Home Insurance Company, 66 N.Y. 1105, holding that a foreign corporation which leased a boat to be run entirely within New York waters was not doing business in New York."

In view of these decisions, we must hold that appellants were not doing business outside the state during the year 1931 and that consequently the Commissioner acted properly in proposing the additional assessments in question.

O Q D E Q

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

IT IS ~~HEREBY~~ OQDEQED, ADJUDGED AND DECQEED, that the action of Charles J. **McColgan**, Franchise Tax Commissioner, in overruling the protests of **Rockgas** Utilities Company, Ltd., and Imperial Gas Company, against proposed assessments of additional taxes for the year 1931 based upon their returns for the year ended December 31, 1930, pursuant to Chapter 13, Statutes of 1929, as amended, be ant the same is hereby sustained.

Done at Sacramento, California, this 21st day of May, 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