BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
APEX ROTAREX MANUFACTURING CO.)

ppearances:

For Appellant: E. D. Turner, Jr,, of Schloss, Turner and and Finney, its Attorney; R. R. Dennis, Assistant Treasurer of Appellant
For Respondent: Chas. J, McColgan, Franchise Tax Commissione

O P I N I O N

This is an appeal pursuant to Section 25 of the Bank and Corporation Franchise Tax Act (Chapter 13, Statutes of 1929, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of the Apex Rotarex Manufacturing Company to his proposed assessment of an additional tax of $225.79, based upon the return of income of the corporation for the year ended December 31, 1933.

The only point involved in this appeal is whether all the income of the Appellant for the year ended December 31, 1933, was income from business done within this State, as maintained by the Commissioner, or whether some of its income was from business done outside the state and therefore, subject to allocation, as claimed by the Appellant, pursuant to 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 is a domestic corporation with its manufacturing plant and principal office at Oakland, California. It is engaged in the business of manufacturing and assembling washers and ironers at the Oakland plant and in the sale of

these products to retailers and wholesalers located within and without the state. Its sales are made through representatives, called district managers, who are agents or employees of the company, who have general power to make sales on behalf of the company and who devote their entire time to the company's business. Four such representatives were permanently located in the States of Oregon, Washington and Utah during the year ended December 31, 1933, the offices occupied by them in Oregon and Washington being maintained in the name of the company and the office in Utah in the name of the representative. The company also had a representative at Chicago, Illinois, who, however, merely represented the company in that locality with certain large purchasers, but who did not there make sales or deliveries on behalf of the company.

Deliveries were made pursuant to sales executed by the representatives in Oregon, Washington and Utah either from stocks regularly maintained in warehouses at their respective locations or from the plant at Oakland. Collections made in Oregon were there deposited as inter-branch deposits in the Bank of America to the credit of the Oakland office of the company and collections made by the representatives in other states were remitted through appropriate drafts, etc., to that office. Accounts receivable were carried on the books of the company at Oakland and invoices rendered from that office.

We are of the opinion that the sale and delivery from stocks regularly maintained in warehouses located outside the state by employees occupying offices of Appellant located outside the state in the manner set forth herein constitute business done outside the state. Kehrer v. Stewart, 197 U. S. 60; Cheney Brothers Co. v. Massachusetts, 246 U. S. 147; Sonneborn Brothers v. Curetan, 262 U. S. 506. Under the principles set forth in these cases it would be competent for the States of Oregon, Washington and Utah to impose a franchise tax upon Appellant measured by a portion of its net income and this State must, accordingly, pursuant to Section 10 of the Bank and Corporation Franchise Tax Act, allocate a portion of that income to business done without the state to avoid subjecting the Appellant to double taxation.

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 Chas. J. McColgan, Franchise Tax Commissioner, in overruling the protest of Apex Rotarex Manufacturing Co. against a proposed additional assessment in the amount of $225.79 based upon the return of income of income of said corporation for the year ended December 31, 1933, under Chapter 13, Statutes of 1929, as amended 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 9th day of November, 1936, by the State Board of Equalization.

R. E. Collins, Chairman
Fred E. Stewart, Member
Ray Edgar, Member

ATTEST: Dixwell L. Pierce, Secretary