



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
O'BRYAN BROTHERS, INC.)

Appearances:

For Appellant: W. L. O'Bryan, its Assistant Secretary

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

O P I N I O N

This appeal is made 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 O'Bryan Brothers, Inc., a corporation, to his proposed assessment of an additional tax in the amount of \$420.34 for the fiscal year ended June 30, 1937, based upon the income of the corporation for the fiscal year ended June 30, 1936.

The Appellant, a foreign corporation which has qualified to do business in this State, maintains a branch office and factory in San Francisco at which it engages in the manufacture and sale of underwear. The San Francisco branch is operated as an independent business, separate records and accounts being maintained of its transactions. Sales are made from stocks of goods located in San Francisco to customers within and without the state, all goods being shipped from San Francisco and all salesmen engaged in the sale of those goods operating from the San Francisco place of business. Appellant's entire income from the operation of that place of business is derived from such sales, its return for the year in question allocating to this state a portion of that income, i.e., the receipts from sales made to California customers, and designating the balance as "interstate commerce sales" which were apparently excluded from the measure of the tax. The Commissioner included the entire income in the measure of the tax and levied his proposed assessment accordingly.

Aside from the statement in its memorandum of points and authorities that sales were made in the States of Oregon, Washington, Idaho, Montana, Nevada and Arizona, Appellant has submitted no information or evidence whatever as to the nature of its operations in those states or the nature of the transactions designated in its return as interstate commerce sales. The only contention presented by it is that the state is without constitutional authority to include in the measure of the tax any portion of the net income derived from sales in interstate commerce by a foreign corporation engaging in business in the

Appeal of O'Bryan Brothers, Inc.

state in both intrastate and interstate commerce.

It might be observed at the outset that Appellant has not submitted any facts tending to establish, insofar as the operations of the San Francisco place of business are concerned, that it is engaged in business both within and without the state. Furthermore, it has not objected to the allocation by the Commissioner of the entire income from the transactions designated as interstate commerce sales to business done within the state, but has questioned the validity of the Commissioner's action only upon the ground that the inclusion in the measure of the tax of the net income from interstate commerce is prohibited by the Commerce Clause of the Constitution of the United States. This contention of the Appellant is, however, unsound. A state may include in the measure of a franchise tax imposed upon corporations engaged in both intrastate and interstate commerce within the state, the net income of such a corporation arising from business done within the state derived from trans-action; in interstate commerce. Matson Navigation Company v. State Board of Equalization, 297 U. S. 441; 56 Sup. Ct. 553; Underwood Typewriter Company v. Chamberlain, 254 U. S. 113, 41 Sup. Ct. 45. The action of the Commissioner should, accordingly, be sustained:

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 **O'Bryan Brothers, Inc.**, a corporation, to a proposed assessment of an additional tax in the amount of \$420.34 for the fiscal year ended June 30, 1937, based upon the income of said corporation for the fiscal year ended June 30, 1936, pursuant to Chapter 13, Statutes of 1929, as amended, be and the same is hereby sustained.

Done at Sacramento, California, this 7th day of April, 1938, by the State Board of Equalization.

R. E. Collins, Chairman
Fred E. Stewart, Member
Jno. C. Corbett, Member
Wm. G. Conelli, Member

ATTEST: Dixwell L. Pierce, Secretary