

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
FILTRON COMPANY OF CALIFORNIA )

Appearances:

For Appellant: S. M. Cook, its Controller

For Respondent: W. M. Walsh, Assistant Franchise Tax  
Commissioner

Submitted on memoranda without oral hearing.

O P I N I O N

This appeal is made pursuant to Section 27 of the Bank and Corporation Franchise Tax Act (Chapter 13, Statutes of 1929, as amended) from the action of the Franchise Tax Commissioner in denying the claims for refunds of tax of the Filtron Company of California in the amounts of \$37.26 and \$567.50 paid for the taxable years ended December 31, 1935, and December 31, 1936, respectively.

In the letter to the Board constituting its appeal, the Appellant merely stated that it thereby protested, pursuant to Section 27 of the Bank and Corporation Franchise Tax Act, the action of the Commissioner in denying its claims for refunds, its protest being based upon the grounds that the findings of the Commissioner were not in accord with the facts of the case and the provisions of the Act. In response to our request for a memorandum setting forth the grounds or basis of the appeal, the Appellant filed a memorandum reading as follows:

"The basis for our appeal is that we believe we are entitled to a proration of our income for the years in question, inasmuch as during said years we did operate a clay deposit in the State of Arizona and did also own real property in the said state during the said years, and, under the formula used by the Franchise Tax Commissioner, this entitles us to allocate a portion of our income to Arizona. The taxes for the years in question have already been assessed by and paid to the State of Arizona and also there has also been paid to the State of California a tax calculated on our entire income for the said years."

In the memorandum filed in support of his position, the Commissioner states his understanding of the facts to be as

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follows! The Appellant is engaged in the business of manufacturing and selling decolorizing clay, part of the clay being mined in Arizona and part in California, but all being distributed from the Appellant's plant at Vernon, California. While the Appellant owns a small amount of property in Arizona and that state has imposed upon it a tax measured by that proportion of its total income which the cost of the clay produced in Arizona bears to the total manufacturing cost, no sales of clay are attributable to Arizona. The Arizona clay deposit is not in fact "operated" by Appellant, the mining in that state being done by contract and the Appellant having no payroll whatsoever in that state during the years involved herein.

The Appellant did not file a memorandum in reply to that of the Commissioner and having neither requested a continuance nor made an appearance at the time set for the hearing of the appeal, the matter was submitted for decision on the basis of the memoranda theretofore filed therein. It is apparent, therefore, that if the Appellant is to prevail on its contention that a portion of its income is allowable to the State of Arizona and should not be included in the measure of the California tax, it must do so upon the basis of a record indicating that the only business done by it in Arizona is the ownership of a small amount of property located in that state, the property being mined by another person pursuant to a contract executed by that person and the Appellant. No statement whatever appears in the record as to the place of execution of the contract.

Under Section 10 of the Bank and Corporation Franchise Tax Act, the Appellant, a domestic corporation, is liable for a tax measured by its entire net income unless its entire business is not done in this State, in which case the tax is measured by that portion of its income which is derived from business done in this State. The mere ownership by Appellant of "a small amount of property" located in Arizona clearly does not constitute the doing of business by Appellant outside California. (*McCoach v. Minehill & Schuylhill Have R. Co.*, 228 U.S. 295; *U.S. Rubber Co. v. Query*, 19 F. Supp. 191; *Harrison v. Forsyth Hunter Co.*, 170 Gas, 640, 153 S.E. 758; *Norman v. Southwestern R. Co.*, 42 Ga. App. 812, 157 S.E. 531; *Attorney General v. Wall River R. Co.*, 233 Mass. 466, 124 N.E. 289; *People ex rel Lehig & N.Y.R. Co. v. Lohmer*, 217 N.Y. 433, 112 N.E. 181.)

Likewise, we believe that the conduct of mining operations on that property by another person under contract, Appellant having no employees in Arizona and, so far as the record shows, no office in that state, does not constitute the doing of business outside California. This proposition would appear to be sufficiently established by cases holding that a foreign corporation which is represented in a state by a factor or other person occupying the status of an independent contractor as distinguished from an agent or employee is not doing business in the state and is therefore not subject to its jurisdiction, either as regards compliance with the state's corporation laws (*Republic Steel Co. v. Atlas House Wrecking Co.*, 113 S.W. (2d) 155), or the imposition of a state franchise tax (*So. Cotton*

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Oil Co. v. Roberts, 25 App. Div. 13).

Inasmuch as there appear in the record no facts showing that the Appellant itself carried on any activities outside of California, the action of the Commissioner in measuring the tax by its entire net income and in denying its claims for refunds of tax should 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 denying the claims for refunds of tax of the Filtrol Company of California in the amounts of \$37.26 and \$567.50 for the taxable years ended December 31, 1935, and December 31, 1936, be and the same is hereby sustained.

Done at Sacramento, California, this 15th day of November, 1939, by the State Board of Equalization,

Fred E. Stewart, Member  
George R. Reilly, Member  
Harry B. Riley, Member

ATTEST: Dixwell L. Pierce, Secretary