



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
GREEN SPOT, INC. }

Appearances:

For Appellant: W. R. Thomas, its President; Howard M. Binford, Attorney at Law
For Respondent:: W. M. Walsh, Assistant Franchise Tax Commissioner; Frank M. Keesling, Franchise Tax Counsel; Clyde Bondeson, Senior Franchise Tax Auditor

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 claim of Green Spot, Inc., for refund of tax in the amount of \$436.89 paid for the taxable year ended December 31, 1937.

The Appellant acts as sales agent for another corporation, Hyland-Stanford Company. Its sales are made through independent brokers operating within and without the state in assigned territories. The brokers are compensated solely on a commission basis, pay their own expenses and also pay the warehousing costs incurred in connection with the storage of Appellant's products within their respective territories. Delivery is made to purchasers of the products either from the stocks maintained at these warehouses or from the Appellant's source of supply in this State. Ninety-four and one-half per cent of Appellant's sales during the year in question were made through the brokers operating outside California,

Appellant's contention that the consummation of its sales by brokers operating in other states constitutes business done outside the state cannot be sustained. A similar contention was made in Southern Cotton Oil Co. v. Roberts, 25 App. Div. 13. It was there held that a foreign corporation whose products were sold in New York through commission merchants was not doing business in New York. The court pointed out that "The goods consigned to the commission merchants were in their possession and control, and their disposition in accordance with the direction of the relator was part of their business, not the business of the relator." (See also appeal of Great Western Electro Chemical Co., April 24, 1934.)

Appellant alleges that it maintains warehouses in other states and that many deliveries are made therefrom. The mere ownership of property outside the state, however, does not constitute doing business outside the state. (McCoach v. Minehill

Appeal of Green Spot, Inc.

& Schuylhill Haven R. Co., 228 U.S. 295; U.S. Rubber Co. v. Query, 19 F. Supp. 191; Harrison v. Forsyth Hunter Co., 170 Ga. 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 Lehigh & N. Y. R. Co. v. Lohmer, 217 N.Y. 433, 112 N.E. 181).

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 claim for refund of tax of the Green Spot, Inc. in the amount of **\$436.89** for the taxable year ended December 31, 1937, 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