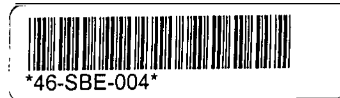

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
THE HOWE SCALE COMPANY)

Appearances:

For Appellant: Raymond Perry, Attorney at Law

For Respondent: W. M. Walsh, Assistant Franchise Tax Commissioner; James J. Arditto, Franchise Tax Counsel

OPINION

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 The Howe Scale Company to a proposed assessment of additional tax in the amount of $471.71 for the taxable year ended December 31, 1938.

Appellant, a Vermont corporation, is engaged in the manufacture and sale of delivery and weighing equipment. Its factory and principal office are in Vermont, branch stores through which it sells its products being maintained in California and other states. Each branch is operated as a separate unit, and the income of each is computed by separate accounting.

For the income year ended December 31, 1937, Appellant filed its franchise tax return showing a loss of $2,533.75 from operations in California although it earned a total net income of $3,24,015.88 from all its operations both within and without the State. The Commissioner refused to accept Appellant's seperate accounting method as properly assigning to California income derived from business done within the State and proposed a deficiency assessment based on income determined through the application of an allocation formula pursuant to Section 10 of the Act.

It is the contention of Appellant that its separate accounting accurately determines its income or loss derived from California business and that the use of the allocation formula apportions to California income earned from without the State.

The application of a property, payroll and sales allocation formula to the entire net income of a unitary business carried on in California and other states was approved by the Supreme Court of the United States in Butler Brothers v. McColgan 315 U. S. 501, even though seperate accounting for California operations had been maintained. The Court stated therein that "One

who attacks a formula of apportionment carries a. distinct burden of showing by 'clear and cogent evidence' that it results in extraterritorial values being taxed." 315 U.S. 501, 517.

As in the Butler Brothers case, efforts were made here to demonstrate that Appellant's operations within the State were segregated from those without the State, it being argued that the separate accounting method more clearly reflects the portion of business done in California. TO support its contention, Appellant states that each branch is charged the same prices, f.o.b. factory, those prices being based upon actual manufacturing cost plus 1½ to 2 per cent "executive overhead." It is argued that selling expenses in California are greater than in other states due to the additional transportation costs that cannot be passed on to the ultimate purchaser, and due to the necessity, because of the greater distance from the factory, of carrying a larger inventory in proportion to business done than the eastern branches, these factors resulting in higher carrying charges, taxes, and the paying of higher rentals for the occupancy of larger quarters.

Appellant by this statement and argument has not, in our opinion, carried the burden of proodf required. No detailed computations in support of that Appellant's claim that the formula method apportioned to California income in excess of that having its source within this State have been submitted. Further, no showing has been made to negate the assumption of the Commissioner, a matter considered significant in the Butler Brothers case, that the sales volume of the California branches, despite greater selling expenses, increased income in other states by reducing the unit manufacturing cost. The only factual difference between that case and the instant matter was that there the saving was attributable to the ability to purchase at lower prices because of the sales volume contributed hy the California store.

In our opinion, it sufficiently appears that the Appellant has not established by "clear and cogent evidence" that the application of the allocation formula by the Commissioner has resulted in the taxation in this State of extraterritorial values.

ORDER

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 The Howe Scale Company to his proceed assessment of additional tax in the amount of $471.71 for the taxable year ended December 31, 1938, pursuant to Chapter 13, Statutes of 1929, as amended, be and the same is hereby sustained.

Done at Sacramento, California, this 28th day of March, 1946, by the State Board of Equalization.

R. E. Collins, Chairman
W.m. G. Bonelli, Member
J. H. Quinn, Member
Geo. R. Reilly, Member

ATTEST: Dixwell L. Pierce, Secretary