



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
AMES HARRIS NEVILLE CO.)

Appearances:

For Appellant: L. W. Wrixon, Certified Public Accountant
For Respondent: Burl D. Lack, Chief Counsel; Crawford H. Thomas, Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to Section 25667 of the Revenue and Taxation Code from the action of the Franchise Tax Board in partially denying the claims of Ames Harris Neville Co, for refunds of franchise tax in the amounts of \$2,711.62, \$651.10, \$126.94 and \$379.92 for the income years 1947, 1948, 1949, and 1950, respectively.

Appellant, a California corporation, owns and operates several plants in California, its principal plant being located in San Francisco. It also owns and operates a plant in Portland, Oregon, and is engaged in business in several other states. One of the principal products manufactured by Appellant in its San Francisco and Portland plants is jute bags. The jute from which these bags are made is largely purchased in India through independent brokers. Title passes to Appellant in India and the jute is transported via ocean carrier to the California and Oregon plants.

On its franchise tax returns for the income years in question the Appellant allocated its net income to sources within and without the State by the use of the three-factor formula of property, payroll and sales. In each of the years in question Appellant included as California property the value at the close of the year of jute destined for its San Francisco plant which was either aboard ships on the high seas or in Indian ports awaiting shipment. It now contends that this jute should not have been assigned to California for purposes of the property factor. The Franchise Tax Board, however, takes the position that inclusion of the jute as California property was correct.

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The statutory provision governing the allocation of income during the period in question was Section 10 of the Bank and Corporation Franchise Tax Act (now Section 25101 of the Revenue and Taxation Code). It read:

When the income of the bank or corporation is derived from or attributable to sources both within and without the State, the tax shall be measured by the net income derived from or attributable to sources within this State. Such income shall be determined by an allocation upon the basis of sales, purchases, expenses of manufacture, pay roll, value and **situs** of tangible property or by reference to any of these or other factors or by such other method of allocation as is fairly calculated to determine the net income derived from or attributable to sources within this State. Income from business carried on partly within and partly without this State shall be allocated in such a manner as is fairly calculated to apportion such income among the States or countries in which such business is conducted . . ."

Appellant points to the words "**situs** of tangible property" in the statute and contends that where property is used as a factor in the allocation formula it must be assigned according to its **situs** as that term is defined for property tax purposes. However, we are not concerned here with the taxation of property but with the allocation of income from a business conducted partly within and partly without this **State**. The factors mentioned in the statute are themselves only suggestive (El Dorado Oil Works v. McColgan, 34 Cal, 2d 731, 737). The only express requirement of the statute is that the method used be fairly calculated to apportion the income among the places where the business is conducted. Appellant is not conducting business in India or on the high seas because it acts there only through independent contractors (Irvine Co. v. McColgan, 26 Cal. 2d 160).

Appellant does not contend and has produced no evidence to show that its initial application of the three-factor formula produced an erroneous or unfair result, or conversely, that deletion from the property factor of the raw materials in question would result in a more accurate or equitable apportionment of unitary income among the various states in which business is done. It states, rather, that the sole question for determination in this appeal is whether the raw materials had a "**situs**" in California prior to their arrival within the State,

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To thus narrow the issue presumes that the assignment to California for purposes of the property factor of property not physically within the State is barred by the statute. A fair reading of the language of Section 10 of the Act, however, clearly refutes the existence of any such restriction. To the contrary, the Franchise Tax Board is granted broad discretion in determining the proper method of allocating income. (El Dorado Oil Works v. McColgan (supra); Pacific Fruit Express Co, v. McColgan, 67 Cal, App. 2d 93). Since the application of the formula did not conflict with the statute and was not manifestly unreasonable, the action of the Franchise Tax Board must be sustained, (Butler Brothers v. McColgan, 315 U.S. 501).

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, pursuant to Section 25667 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in partially denying the claims for refund of Ames Harris Neville Co, in the amounts of \$2,711.62, \$651.10, \$126.94 and \$379.92 for the income years 1947, 1948, 1949 and 1950, respectively, be and the same is hereby sustained,

Done at Sacramento, California, this 21st day of November, 1957, by the State Board of Equalization.

Robert E. McDavid, Chairman

J. H. Quinn, Member

Geo. R. Reilly, Member

Paul R. Leake, Member

Robert C. Kirkwood, Member

ATTEST: Dixwell L. Pierce, Secretary