



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
AETNA PLYWOOD & VENEER COMPANY)

Appearances:

For Appellant: Foss and Schuman, Attorneys at Law

For Respondent: Burl D. Lack, Chief Counsel;
John S. Warren, Associate Tax Counsel;
Jack Rubin, Junior 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 denying the protest of Aetna Plywood & Veneer Company to a proposed assessment of additional corporation income tax in the amount of \$4,975.14 for the year 1947.

Appellant is a Delaware corporation with its principal place of business in Chicago, Illinois. When Appellant was incorporated on February 28, 1947, it acquired the assets of a predecessor partnership. These assets included a contract dated October 29, 1945, to purchase from the Southern Pacific Company timberland in California known as the Southern Pacific Tract. On April 1, 1947, Appellant entered into a contract to purchase another California timber tract known as the Miami Tract from a company referred to as Miami.

On October 10, 1947, Appellant contracted to sell these timberlands to Setzer Forest Products, Inc. Setzer made an initial payment to Appellant on both tracts. With regard to the Southern Pacific Tract, it agreed with Appellant to make the remaining payments which Appellant owed to Southern Pacific Company. Setzer made the payments directly to Southern Pacific Company and in 1952, upon final payment, Southern Pacific conveyed title directly to Setzer. With respect to the Miami Tract, Setzer made payments to Appellant, who in turn paid Miami. After final payment in 1952, Miami conveyed title to Appellant and Appellant conveyed it to Setzer.

Also among the assets received by Appellant from its predecessor partnership was certain stock in Berg Lumber Company, a Delaware corporation with its principal place of

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business in California. The partnership had acquired the stock as security for a loan of \$175,000 which it had made to the Berg company, Berg was liquidated in April of 1947, having suffered a substantial loss from fire in January of that year. Upon the liquidation, Appellant received certain timberland and equipment in exchange for its rights in the Berg stock. Appellant sold these assets in the period from May to August of 1947 for a total of \$160,250.

The above facts are derived primarily from a memorandum filed by the Franchise Tax Board. The Appellant filed only a very short opening memorandum, did not avail itself of an opportunity to reply to the memorandum of the Franchise Tax Board and failed to appear at a scheduled oral hearing. It has presented very few facts and no authority in support of its position,

The issues are (1) whether gain from the transaction with respect to the Southern Pacific Tract had its source in this State, (2) whether legal expense in the amount of \$3,981.10 allegedly incurred in 1952 with respect to the Miami or Southern Pacific transaction is deductible for the year 1947 and (3) whether the difference between the loan made to Berg and the amount realized on the sale of the assets received from Berg is deductible for the year 1947.

In connection with the first issue Section 3 of the Corporation Income Tax Act (now Section 23640 of the Revenue and Taxation Code) provides:

"... Income from sources within this State includes income from tangible or intangible property located or having a situs in this State . . ."

Regulation 23040(a), Title 18, California Administrative Code, provides:

"Income from sources within this State' includes income from, rentals of, or gains realized from the sale of real or tangible personal property located in this State, regardless of where the sale or transfer is consummated ..."

As pointed out by the Franchise Tax Board, the courts have frequently held that under an executory contract to purchase land, the vendee becomes the equitable owner of the land while the vendor merely retains the bare legal title as security for

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the purchase price (S.R.A. v. Minnesota, 327 U.S. 558; Eelsley v. Mohan, 31 Cal. 2d 637; Sherman v. Quinn, 31 Cal. 2d 661; Elliott v. McCombs, 17 Cal. 2d 23; O'Neill v. O'Malley, 75 Cal. App. 2d 821; Estate of Reid, 26 Cal. App. 2d 362). Appellant has offered no reason why these cases should not apply to its situation. We conclude that Appellant held and sold to Setzer an ownership interest in the Southern Pacific Tract, and that the gain on the transaction had its source in this State.

With respect to the second issue, assuming that Appellant incurred a legal expense in 1952 in connection with the land transactions, it has not demonstrated that the liability was fixed in 1947 so that it could properly be deducted in that year. The Franchise Tax Board must therefore be sustained on this issue (E.H. Sheldon & Co. v. Commissioner, 214 Fed. 2d 655; Kanne v. American Factors, 190 Fed. 2d 155; Cold Metal Process Co., 17 T.C. 916).

As to the final issue, it is clear that no loss on the loan to Berg Lumber Company or on the stock of that company may be attributed to California. Appellant's interest in Berg, whether regarded as that of a creditor or of a stockholder, was an intangible interest which had its situs at Appellant's domicile (Miller v. McColgan, 17 Cal. 2d 432; Rainier Brewing Co. v. McColgan, 94 Cal. App. 2d 118). Although the assets received from Berg had a situs in California, there is no showing that the price at which they were sold was less than their basis for gain or loss, that is, their fair market value at the time of the liquidation (Lipsitz v. Commissioner, 220 Fed. 2d 871, cert. den. 350 U.S. 845; Frank E. Gilman, 14 T.C. 833; Appeal of George Theis, Jr., 3 B.T.A. 1030).

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 on the protest of Aetna Plywood & Veneer Company to a proposed assessment of additional corporation income tax in the amount of \$4,975.14 for

