

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

Sa...

In the Matter of the Appeal of     )  
CAGNEY PRODUCTIONS, INC.            )

Appearances:

For Appellant:     Richard F. Alden, Attorney at Law

For Respondent:    John S. Warren, Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to Section 25607 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the protests of Cagney Productions, Inc., to proposed assessments of additional franchise tax in the amounts of \$5,097.52 and \$12,042.85 for the income years ended July 31, 1944, and July 31, 1946, respectively.

Appellant is a California corporation with its principal office in this State. During the years in question it was engaged in producing motion pictures. These pictures were distributed by United Artists Corporation to exhibitors throughout the United States and in foreign countries. The receipts from the pictures were derived from rentals paid by the exhibitors.

United Artists is a Delaware corporation with its principal office in New York. It was engaged in distributing the pictures of various producers. Under its agreement with Appellant it was granted the exclusive right to distribute Appellant's films. Appellant retained title to the prints of its pictures and reserved the right to reject exhibition contracts made by United. It expressly kept control over certain aspects, including the making of additional prints, the timing of release of the pictures, changes in the pictures, rebates to exhibitors and advertising. The gross receipts from exhibition were divided between the two parties; United receiving 10 or 25 percent depending upon the amount of the receipts. They shared the costs of items such as advertising, shipping, copyrights and taxes. The agreement provided in part that:

"Producer and United agree that this agreement shall be construed as in no sense a co-partnership between the parties hereto, and that neither

Appeal of Cagney Productions, Inc.

shall have any authority to bind the other or their representatives in any way, but the provisions of this paragraph are not intended to destroy or diminish in anywise the rights, licenses and privileges granted to United with respect to the motion pictures included and as in this agreement set forth. The United is not a fiduciary, but an independent contractor **here-under."**

Appellant also had an agreement with Samuel Goldwyn under which Appellant designated Goldwyn as its representative to exercise its right to reject the exhibition contracts made by United, Goldwyn, who maintained an office in New York, was in the **business** of providing this type of service to motion picture producers. **Goldwyn's** compensation was three percent of Appellant's share of the receipts from the pictures. Goldwyn paid his own rent, salaries and general expenses but was entitled to reimbursement for expenses such as for traveling, entertainment and telephone calls which were directly connected with his services to Appellant. His discretion in rejecting contracts was to be absolute but Appellant reserved the right to supervise and instruct him,

In its franchise tax returns for the years involved, Appellant, acting under Section 10 of the Bank and Corporation Franchise Tax Act (now Section 25101 of the Revenue and Taxation Code), allocated its income within and without California by the three factor formula of property, payroll and sales. It treated as receipts from California sales only those receipts from exhibitors located in **California**. The Franchise Tax Board determined that all of Appellant's receipts must be considered as from California sales for purposes of the sales factor because Appellant engaged in no sales activities outside of this State.

The focal point for consideration in determining the **situs** of a sale for purposes of the allocation formula is the place where the activities of the corporation occurred which resulted in the sale (El Dorado Oil Works v. McColgan, 34 Cal. 2d 731; app. **dism.**, 340 U.S. 801; Irvine Co. v. McColgan, 26 Cal. 2d 160). **Activity** of a corporation is to be distinguished from **activity for its account** by independent contractors who are conducting their own businesses (Irvine Co. v. McColgan, *supra*). ✓

Appeal of Cagney Productions, Inc.

Appellant relies upon the sales activities of United Artists and of Samuel Goldwyn as a basis for assigning a portion of its sales outside of California. United and Goldwyn provided their services to producers generally and maintained business organizations which were entirely separate from Appellant. Contrary to Appellant's contention, the control which it retained under the agreement with United does not negate the express provision in the agreement that United was an independent contractor. That control was far short of complete control over the means which United was to use in carrying out its primary duty of obtaining contracts with exhibitors. Likewise, Appellant appears to have had a broad general power of supervision over Goldwyn, but that is not inconsistent with his having been an independent contractor (McDonald v. Shell Oil Co., 44 Cal, 2d 785). Although United and Goldwyn undoubtedly acted for the Appellant, it is clear that they did so in the capacity of independent contractors engaged in the conduct of their own businesses (United States v. Silk, 331 U.S. 704; Skelton v. Fekete, 120 Cal. App. 2d 401) .

We conclude that the action of the Franchise Tax Board must be upheld,

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 denying the protests of Cagney Productions, Inc., to proposed assessments of additional franchise tax in the amounts of \$5,097.52 and \$12,042.85 for the income years ended July 31, 1944, and July 31, 1946, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 21st day of April, 1959, by the State Board of Equalization.

Paul R. Leake \_\_\_\_\_, Chairman  
George R. Reilly \_\_\_\_\_, Member  
John W. Lynch \_\_\_\_\_, Member  
Richard Nevins \_\_\_\_\_, Member  
\_\_\_\_\_, Member

ATTEST: Dixwell L. Pierce \_\_\_\_\_, Secretary