BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
THE LANE COMPANY, INC.)

Appearances:

For Appellant: Robert L. Spencer, 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 denying the protests of The Lane Company, Inc., to proposed assessments of additional corporation income tax in the amounts and for the years indicated:

1937	$139.71	1947	$ 769.85
1938	76.29	1948	1,187.66
1939	123.81	1949	789.00
1940	149.92	1950	1,083.65
1941	293.97	1951	700.07
1942	208.82	1952	888.89
1943	221.37	1953	957.37
1944	197.77	1954	833.60
1945	271.85	1955	692.82
1946	276.88	1956	1,267.47

Appellant, a Virginia corporation making cedar chests, maintains its factory and offices in that state. It sells its products throughout the country.

Appellant employs several sales representatives who solicit orders from retail stores in California. Orders are transmitted for approval to Appellant's home office in Altavista, Virginia, and merchandise is shipped directly to customers from the factory in Altavista. Appellant has no office in California and owns no property here other than a nominal amount of display samples used by its salesmen.

In 1955, the Franchise Tax Board demanded that Appellant file returns under Section 23501 of the Revenue and Taxation Code, which imposes the corporation income tax on net income derived from sources within California by a corporation not subject to

the corporation franchise tax. Appellant filed returns but reported no tax as due. Thereupon, Respondent issued a notice of proposed assessment for each of the years 1937 to 1955, inclusive, based upon an allocation of a portion of Appellant's income to this State by a three-factor formula of property, payroll and sales. Subsequently, the Franchise Tax Board issued a similar notice of assessment for 1956 and also made additional assessments for the years 1948 through 1955 due to minor adjustments not here in dispute. Notices of the proposed assessments were issued and protests of the Appellant thereto were denied by the Franchise Tax Board prior to 1959.

Appellant first contends that its California activities are an integral and inseparable part of interstate commerce and for that reason imposition of the corporation income tax violates the commerce clause of the United States Constitution.

It is well settled that the commerce clause does not prohibit the application of a net income tax to a person engaged exclusively in interstate commerce, provided there is no discrimination against that commerce and the allocation formula is reasonable. (Northwestern States Portland Cement Co. v. Minnesota (1959) 358 U.S. 450; West Publishing Co. v. McColgan, (1946) 27 Cal. 2d 705, aff'd 328 U.S. 823. We have previously upheld the application of the corporation income tax under circumstances substantially identical to those here present. (Appeal of Walker T. Dickerson Co., Cal. St. Bd. of Equal., Oct. 27, 1953, 1 CCH Cal. Tax Cas. Par. 200-245, 2 P-H State & Local Tax Serv. Cal. Par. 13136; Appeal of Dr. Posner Shoe Co., Cal. St. Bd. of Equal., April 20, 1960, 3 CCH Cal. Tax Cas. Par. 201-539, 2 P-H State & Local Tax Serv. Cal. 13222.)

Public Law 86-272, a federal enactment which denies the states power to impose a tax measured by net income from the sale of tangible personal property in interstate commerce under certain conditions, is not applicable here since the taxes involved were assessed before September 14, 1959, the effective date of the act. (Appeal of American Snuff Co., Cal. St. Bd. of Equal., April 20, 1960, 3 CCH Cal. Tax Cas. Par. 201-538, 2 P-H State & Local Tax Serv. Cal. Par. 13223.)

Appellant argues in the alternative that if it is subject to California's corporation income tax, the sales factor used by Respondent in apportioning net income should be excluded from the allocation formula. This position is predicated on the reasoning that since all of Appellant's sales were made in interstate commerce, using gross receipts from such sales as a measure of the tax is tantamount to imposing a gross receipts tax on interstate commerce. It is contended that such a tax results in a direct, discriminatory burden on interstate commerce and is therefore invalid.

Appellant misconceives the nature of the Franchise Tax Board's calculation. The corporation income tax is measured by that portion of Appellant's net income which is derived from California sources. A ratio of the gross receipts from California sales as compared to the gross receipts from all sales is used in the computation of the net income properly attributable to California. The use of such a ratio can by no stretch of the imagination convert a tax laid on net income into a gross receipts tax.

Appellant cites Panhandle Eastern Pipe Line Co. v. Michigan Corp. & Sec. Comm'n (1956) 77 N.W. 2d 249, cert. denied 352 U.S. 890 and United Piece Dye Works v. Joseph (1953) 121 N.Y.S. 2d 683, aff'd 121 N.E. 2d 617, cert. denied 348 U.S. 916, as authority for its proposition. Those cases, however, are clearly inapplicable since both involved taxes on the privilege of engaging in interstate commerce, Such taxes are to be distinguished from net income taxes. (Northwestern States Portland Cement Co. v. Minnesota, supra.)

Appellant also objects to the use of the sales factor on the ground that it results in double taxation. Appellant states that it has paid taxes to the State of Virginia on its income; that Virginia did not use the sales factor in its allocation formula; and that the Virginia formula did not allocate any income to California,

The cases which we have previously cited in this opinion stand for the proposition that a state may impose a tax upon the net income derived within the state. The allocation formula employed by the Franchise Tax Board to determine the net income attributable to California has frequently been upheld and its fairness has been declared settled. (See John Deere Plow Co. v. Franchise Tax Board, 38 Cal. 2d 214, appeal dismissed 343 U.S. 939, and cases cited therein.) Appellant has not shown that the formula assigns an excessive amount of income to California in its case and the application of the formula must therefore be upheld. The question of whether the State of Virginia properly taxed the same income is not material to this proceeding.

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 protests of The Lane Company, Inc., to proposed assessments of corporation income tax in the amounts and for the years indicated below be and the same is hereby sustained.

1937	$ 139.71	1947	$ 769.85
1938	76.29	1948	1,187.66
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1940	149.92	1950	1,083.65
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1943	221.37	1953	957.37
1944	197.77	1954	833.60
1945	271.85	1955	692.82
1946	276.88	1956	1,267.47

Done at Sacramento, California, this 13th day of December, 1961, by the State Board of Equalization.

John W. Lynch, Chairman

Geo. R. Reilly, Member

Paul R. Leake, Member

_____, Member

_____, Member

ATTEST: Dixwell L. Pierce, Secretary