BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
THE SHEA COMPANY)

For Appellant: Serene, Koster & Barbour,
Certified Public Accountants

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 on the protests of The Shea Company against proposed assessments of additional franchise tax for the income years 1949, 1951, 1953, 1954 and 1956 in the amounts of $323.80, $966.16, $334.88, $34.70 and $1,876.23, respectively.

The sole issue brought before us is whether the total amount or merely an apportioned part of certain expenses for repair and maintenance of equipment is deductible from Appellant's income attributable to sources within the State. With the area of disagreement thus narrowed, the foregoing assessments are in dispute only to the extent of $323.80, $714.90, $255.67, $34.70 and $261.86, respectively, for the income years in question.

Appellant is a construction company, incorporated in Nevada, which has been doing business both within and without California for a number of years. Its out-of-State work usually has been handled with equipment rented or purchased in the locality of those jobs. With few exceptions its other equipment has always remained in California and has been maintained and repaired at two yards within the State. This equipment was at times rented to others in California and at other times was used by Appellant on its own construction jobs here. Each year, some of the equipment was sold as salvage or to joint ventures in which Appellant was a coventurer.

In reporting its income attributable to California during the years in question Appellant used a separate accounting method as follows. Gross income was assigned to the particular construction job which produced that income and, accordingly, to the state in which the job was performed. Income from equipment rentals and sales was assigned to California. Deductions for expenses wholly identifiable with particular jobs or the equipment operation were likewise assigned. The remaining deductions, consisting

mainly of administrative and other overhead expenses, were apportioned among the various operations.

Appellant did not employ repairmen as such. It has always employed watchmen who were also handymen and could help maintain the equipment. In addition, foremen and other key personnel who were not otherwise occupied have worked on maintenance and repair of the equipment. Appellant treated the wages of these employees, when repairing and maintaining equipment, as identifiable only with operations in California and, therefore, wholly deductible from income attributable to California sources.

In the following table, the amount of wages claimed as repair expense is compared with the depreciation of the equipment and the receipts from rentals and California construction, as disclosed by Appellant's returns:

	Wages Claimed	Depreciation (4 yr. life)	Rentals	California Construction
1949	$36,239.77	$41,270.57	$23,968.71	$72,866.01
1951	14,399.99	24,480.72	0	0
1953	10,570.69	2,530.34	12,410.74	0
1956	6,612.22	1,881.49 3,634.40	1,065.67	375,508.63 14,040.00
	3,478.00		0	

The Franchise Tax Board has determined that the wages of personnel when performing repair and maintenance work in periods of otherwise slack time should be apportioned as an overhead expense. Its basic premise is that these wages were paid primarily to retain the services of trained construction men between jobs. It also contends that this expense involved the use of highly paid employees on tasks beneath their primary skills and that Appellant has not shown any basis for segregating the amount properly assignable as ordinary and necessary repair expense.

Through its approach, Respondent has apportioned to California the following percentages of the wages claimed as repair expense:

1949	25 percent
1951	2 percent
1953	41 percent
1954	45 percent
1956	38 percent

It appears reasonable to expect that ordinary and necessary repair expenses would have a fairly consistent relationship each year to the amount of the equipment and its use. In

the table set forth above, we have compiled all of the evidence available to us bearing on the factors which seem pertinent. As may be seen from the table, there is a notable lack of correlation between the wages claimed each year as repair expense and the other figures. This lends support to Respondent's position that a considerable part of the wages constituted stand-by pay. To that extent, the wages should properly be apportioned as overhead.

No doubt, precision would call for assigning entirely to California that portion of the wages reasonably attributable to the repair of equipment employed here. We have no basis, however, for making such a breakdown. By treating all of the repair wages as overhead, Respondent has apportioned substantial amounts to California. On the facts before us, we are unable to add further refinements,

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 Shea Company against proposed assessments of additional franchise tax for the income years 1949, 1951, 1953, 1954 and 1956 in the amounts of $323.80, $966.16, $334.88, $34.70 and $1,876.23, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 13th day of February, 1962, by the State Board of Equalization.

George R. Reilly, Chairman

John W. Lynch, Member

Paul R. Leake, Member

Richard Nevins, Member

_____, Member

ATTEST: Dixwell L. Pierce, Secretary