BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
E. V. LANE CORPORATION)

For Appellant: Thelen, Marrin, Johnson & Bridges and Michael L. Mellor, Attorneys at Law

For Respondent: Burl D. Lack, Chief Counsel; Crawford H. Thomas, Associate Tax Counsel

O P I N I ON

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 E. V. Lane Corporation to proposed assessments of additional franchise tax in the amounts of $1,205.98, $1,205.98, $2,733.15 and $2,671.09 for the taxable years ended April 30, 1953, 1954, 1955 and 1956, respectively. Since Appellant was a "commencing" corporation the taxes for the years ended in 1953 and 1954 are both based upon income for the year ended in 1953. (Rev. & Tax. Code, § 23222.)

Appellant is a Nevada corporation with its principal office in California. It is engaged in the general contracting business here and in other states. It commenced business in California on May 1, 1952, and adopted a fiscal year ending April 30. Mr. and Mrs. E. V. Lane each own 50 percent of Appellant's stock,

During the period before us. Appellant received all but an insignificant portion of its income from three principal sources: (1) it was engaged with others in construction joint ventures outside of California; (2) it rented equipment located both within and without California; and (3) it received income under an agreement with Laneco, Inc., a corporation the stock of which was owned by Mr. and Mrs. Lane.

Laneco, Inc., was a Panamanian corporation which had a contract to construct certain facilities in Okinawa. Laneco and Appellant entered into an agreement under which Appellant was to perform for Laneco all of those functions in connection with Laneco's construction work which had to be performed in the United States. These functions consisted of such activities as procuring materials and personnel and performing engineering services. Under this agreement Laneco was to reimburse Appellant for all actual costs incurred on Laneco's behalf, plus a percentage of

such costs. In addition, Laneco was to pay Appellant the following expenses, plus 15 percent of those expenses:

> All overhead expenses of Corporation properly allocable to the performance of this Agreement under standard accounting practice, including all salaries, wages, bonuses and vacation allowances paid to personnel employed by Corporation in the performance of this Agreement.

Appellant determined its California net income by a separate accounting method. Gross income and expenses pertaining to a particular job were apportioned to the state where the job was performed. Equipment rental was allocated according to the situs of the equipment. Income received under Appellant% agreement with Laneco was considered California income.

Appellant incurred general overhead or administrative expense during the years involved. Pursuant to its agreement with Laneco, Appellant ascertained the portion of officers' salaries, employees' payroll, payroll insurance and telephone and telegraph expense chargeable to the performance of the agreement. This amount was charged to Laneco and Appellant was reimbursed for such charges.

Appellant's accounting system did not charge the remainder of such items or other items such as office rent, office expense and travel expense to any specific job or income producing activity. For convenience, these collective items will be referred to as "unapportioned overhead."

On Appellant's return for the income year ended April 30, 1953, all of the "unapportioned overheads' was deducted from California income. On its return for the income year ended in 1954, Appellant reported as items of gross income the net amounts it received from its varous activities. It determined that the California net amount was 90.29 percent of the total net amount from all sources and deducted that percentage of its overhead from California income. On a similar basis, it claimed as a California deduction 64.84 percent of its "unapportioned overhead?' on its return for the income year ended in 1955.

Respondent reapportioned this overhead expense in the following manner:

(1) That amount of officers' salaries, employees' payroll, payroll insurance and telephone and telegraph expense which Appellant had not charged to Laneco was apportioned on the basis of direct construction costs. Since the direct construction costs were all incurred without California during the years involved, the amount thus segregated was apportioned without the State.

(2) The balance of the "unapportioned overhead," consisting of the items such as office rent, office expense and travel expense was assigned to California in that proportion which the amount of officers' salaries, employees' payroll, payroll insurance and telephone and telegraph expense that was charged to Laneco bore to the total of the officers' salaries, employees' payroll, payroll insurance and telephone and telegraph expense.

Appellant contends that the Franchise Tax Board's method of apportioning overhead expenses (1) fails to take into account Appellant's income, also chargeable with a portion of overhead expenses, from California sources other than services performed for Laneco, and (2) erroneously assumes that all items of overhead expense attributable to Laneco were, in fact, charged to and reimbursed by Laneco. However, even after having been granted time in which to file a supplementary memorandum in support of its position, Appellant has presented no facts and figures by which we might identify the error, if any, in the Franchise Tax Board's method of apportionment.

Appellant cannot merely assert the incorrectness of the method of apportionment used and thereby shift the burden to the Franchise Tax Board to justify its use. (Todd v. McColgan, 89 Cal. App. 2d 509, 514.) A presumption of correctness attaches to the action of the Franchise Tax Board and it is incumbent upon the Appellant to establish wherein that action results in the taxation of income derived from sources outside this State. As the Appellant has offered no evidence in this regard, the apportionment of the Franchise Tax Board, which is by no means unreasonable on its face, 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 therefo 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 E. V. Lane Corporation to proposed assessments of additional franchise tax in the amounts of $1,205.98, $1,205.98, $2,733.15 and $2,671.09 for the taxable years ended April 30, 1953, 1954, 1955 and 1956, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 17th day of May, 1962, by the State Board of Equalization.

Geo. R. Reilly, Chairman
John W. Lynch, Member
Paul R. Leake, Member
Richard Nevins, Member
M e m b e r

ATTEST: Dixwell L. Pierce, Secretary