

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the **Matter** of the Appeal of)
V.C.A. CORPORATION)

Appearances:

For Appellant: James B. **Isaacs**, Attorney at Law

For Respondent: Burl D. Lack, Chief 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 protest of V.C.A. Corporation against a proposed assessment of corporation income tax in the mount of **\$9,570.36** for the year **1953**.

Appellant was incorporated under the laws of Delaware on September 30, **1952**. It designated The Corporation Trust Company as its resident agent in Delaware and the office of that company as its principal office.

Appellant was a wholly owned subsidiary of **Rexall** Drug Company, which did business in California and had its principal office here. Appellant's sole asset was the stock of V.C.A. Laboratories, a New Jersey corporation which also did business in California.

At a meeting of the incorporators in Wilmington, Delaware, *on* the day appellant was incorporated three directors were named, two of whom were also directors of **Rexall** Drug Company. All three of the directors were officers of **Rexall** Drug Company and residents of California,

At a special meeting of the board of directors of appellant on January 5, **1953**, at the offices of **Rexall** Drug Company in Los Angeles, California, it was resolved that future shareholders' meetings would be held in Los Angeles. **Subsequently**, all shareholders' and directors' meetings were held there in-the offices of the **Rexall** Drug Company, During **1953**, there was one meeting in addition to that held on January 5.

In early **1953** appellant received a \$300,000 dividend from its subsidiary, V.C.A. Laboratories. This dividend was deposited in a

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Los Angeles Bank.

Appellant was dissolved in 1955 and the deposit in the Los Angeles bank was distributed to Rexall Drug Company,, V.C.A. Laboratories was also dissolved in 1955 and thereafter became a division of Rexall Drug Company.

Appellant's only corporate acts during the year in question were those above described, From the time of its incorporation to the date of its dissolution, appellant had no corporate activities in Delaware.

Respondent has proposed to treat the dividend of \$300,000 as income subject to our corporation income tax, Its theory is that appellant had acquired a "commercial domicile" in this state and that the situs of its intangible property, the stock which produced the dividend, was in California.

The general principles applicable in this matter have been explored in a particularly thorough manner in Southern Pacific Co. v. McColgan, 68 Cal. App. 2d 48 (156 P.2d 81), and United Gas Corp. v. Fontenot, 241 La. 488 (129 So.2d 748). As pointed out in those cases, intangible property is usually considered to have a situs for tax purposes at the domicile of the owner, In the past, the domicile of a corporation was always regarded as the state where it was incorporated. This rule proved satisfactory until it became common practice for corporations to center their operations in states other than the ones in which they were incorporated. In order to prevent a legal fiction from dominating reality in these situations, the United States Supreme Court ascribed to intangibles a situs within the state where the corporation concentrated its functions. (Wheeling Steel Corp. v. Fox, 298 U.S. 193 (80 L.Ed. 1143); First Bank Stock Corp., v. Minn., 301 U.S. 234 (81 L.Ed. 1061).) The court said in the Wheeling Steel case that:

The Corporation established in West Virginia what has aptly been termed a "commercial domicile." It maintains its general business offices at Wheeling and there it keeps its books and accounting records. There its directors hold their meetings and its officers conduct the affairs of the Corporation. There, as appellant's counsel well says, "the management functioned." The Corporation has manufacturing plants and sales offices in other States. But what is done at those plants and offices is determined and controlled from the center of authority at Wheeling. The Corporation has made that the actual seat of its corporate government,

Appellant has cited a number of cases which establish that holding company engaged only in the receipt and disbursement of dividends is not "doing business" within the meaning of statutes which impose

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taxes based upon the doing of business. (See, for example, Von Baumbach v. Sargent Land Co., 242 U.S. 503 (61 L.Ed. 460); People ex rel. Manila Electric R.R. & Lighting Corp. v. Knapp, 229 N. Y. 502 (128 N.E. 892).)

The proposed assessments here involved were made pursuant to Chapter 3 of the Bank and Corporation Tax Law, which imposes a tax on corporate income derived from California sources, including income from intangible property having a **situs** in California. (Rev. & Tax, Code, Sec. 23040.) Chapter 3 does not make the doing of business a prerequisite to the application of the tax and we do not believe that the question of whether appellant was so engaged is of controlling importance in determining the **situs** of its intangible property.

The phrase "**commercial domicile**" had its inception in a case where the corporation **was** extensively engaged in business, and thus the terminology was especially apt. (Wheeling Steel Corp. v. Fox, 298 U.S. 193 (80 L.Ed. 1143).) It would be wholly unwarranted, however, to restrict the principle of the case on the basis of the semantics of the term employed. The essential point was that the taxpayer, although incorporated in another state, had made Virginia the actual seat of its corporate government. A corporation's commercial domicile is "**considered in law ... to be its actual (rather than its paper or technical) legal domicile.**" (United Gas Corp. v. Fontenot, 241 La. 488 (129 So.2d 748, 760).)

In Southern Pacific Co. v. McColgan, 68 Cal. App. 2d 48 (156 P.2d 81), the court stated at pages 80 and 81 that:

The true test must be to consider all the facts relating to the particular corporation, and **all** the facts relating to the intangibles in question, and to determine from these facts which state, **among** all the states involved, gives the greatest protection and benefits to the corporation, which state, **among** all the states involved, from a factual and realistic standpoint is the domicile of the corporation,

* * *

We perceive the law to be that where the corporation has only a paper domicile, where the only function performed by the state of incorporation is to breathe life into the corporation, and where no substantial corporate activities are thereafter carried on in that state, then the law looks at such corporation and says that that state where, under the facts, the corporation receives its greatest protection and benefits, that state where the greatest proportion of its control exists, that

