BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

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

For Appellant: Seidman & Seidman,
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 26077 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of The Lane Company, Inc., for refund of corporation income tax in the amounts and for the years indicated:

1937	$341.17	1947	$1,418.06
1938	181.72	1948	2,116.41
1939	287.49	1949	1,358.66
1940	339.12	1950	1,801.03
1941	647.32	1951	1,121.51
1942	447.29	1952	1,370.67
1943	460.89	1953	1,418.82
1944	399.89	1954	1,185.38
1945	533.37	1955	943.63
1946	526.63	1956	1,650.25

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.

Section 23501 of the Revenue and Taxation Code imposes the corporation income tax on net income derived from sources within California by a corporation not subject to the corporation

franchise tax. The Franchise Tax Board allocated a portion of Appellant's income to this state, using a three-factor formula of property, payroll and sales.

Appellant contends (1) that its California activities are an inseparable part of interstate commerce and for that reason imposition of the corporation income tax violates the commerce clause of the United States Constitution; (2) that if the corporation income tax is applicable, the sales factor should be excluded from the allocation formula on the ground that using the gross receipts from interstate sales as a measure of tax is tantamount to imposing a gross receipts tax on interstate commerce; and (3) that the use of the sales factor results in double taxation since Appellant has paid income taxes to the State of Virginia, which did not employ a sales factor in its allocation formula and thus apportioned no income to California.

These issues were considered by us in a prior appeal by Appellant, which involved unpaid assessments. (Appeal of The Lane Co., Cal. St. Bd. of Equal., Dec. 13, 1961, CCH Cal. Tax Rep. Par. 201-879,2 P-H State & Local Tax Serv. Cal. Par, 13267.) The present appeal was taken after payment of those assessments. In the earlier appeal, we rejected Appellant's contentions on the grounds (1) that the commerce clause does not prohibit the application of a net income tax to a corporation engaged exclusively in interstate commerce, provided there is no discrimination against that commerce and the allocation formula is reasonable; (2) that the sales factor is merely a ratio used to compute that portion of Appellant's net income which is properly attributable to California sources and does not convert the tax to one on gross receipts; and (3) that the fairness of the Franchise Tax Board's formula is well settled and Appellant failed to show that an excessive amount of income was assigned to this state. We also noted that Public Law 86-272, a Federal enactment which limits a state's power to tax net income from certain interstate sales, was not applicable since the taxes involved were assessed before September 14, 1959, the effective date of the act.

Appellant has not offered any new arguments or authority in support of its position and we, therefore, adhere to our conclusions in the earlier appeal.

Appeal of The Lane Company, Inc.

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 26077 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claims of The Lane Company, Inc., for refund of corporation income tax in the amounts and for the years indicated below be and the same is hereby sustained.

1937	$341.17	1947	$1,418.06
1938	181.72	1948	2,116.41
1939	287.49	1949	1,358.66
1940	339.12	1950	1,801.03
1941	647.32	1951	1,121.51
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1945	533.37	1955	-943.63
1946	526.63	1956	1,650.25

Done at Sacramento, California, this 18th day of June, 1963, by the State Board of Equalization.

John W. Lynch, Chairman

Paul R. Leake, Member

Richard Nevins, Member

_______________, Member

_______________, Member

ATTEST: Dixwell L. Pierce, Secretary