BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
NO-SAC SPRING COMPANY)

For Appellant: Wayne Van Osdol, Attorney at Law

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 claim of No-Sag Spring Company for a refund of franchise tax and interest in the amount of $3,283.71 for the income and taxable year ended June 30, 1957.

The question presented is whether appellant commenced intrastate business, for franchise tax purposes, in its fiscal year ended June 30, 1956, as contended by respondent, or in the year ended June 30, 1951, as contended by appellant,

Appellant is a Michigan corporation engaged in the manufacture of springs and accessories. On July 17, 1950, appellant was granted a certificate of qualification by the Secretary of State to transact intrastate business in California. At that time and subsequently appellant owned inventory and equipment in this state, had products manufactured for it by an independent contractor here, and made sales to customers here but it had no employees in California until the latter part of 1955, when a salesman was hired. It filed corporation income tax returns for the years ended June 30, 1951 and 1952 and franchise tax returns beginning with the income year ended June 30, 1953, paying taxes upon income which it apportioned to California.

Upon ascertaining the above facts, respondent issued a proposed assessment of additional franchise tax for the taxable year ended June 30, 1957, measured by the income of that year. This action was based upon section 23224 of the Revenue and Taxation Code, which provides that when a corporation formerly subject to the income tax commences an intrastate business, thus becoming subject to the franchise tax, it shall pay an income tax for the year in which it commences business (according to respondent, the year ended June 30, 1956) and at the end of the following year (ended June 30, 1957) two taxes measured by the income of that year, one for that taxable year

and another for the following taxable year (ended June 30, 1958). The statute is designed to place a corporation on the normal basis for paying the franchise tax, which is to pay at the beginning of each taxable year a tax measured by the income of the preceding year. The amount of the assessment, plus interest, was paid by appellant and it now seeks a refund.

Appellant has never previously paid the additional tax imposed by the above statute upon a corporation when it commences intrastate business (i.e., simultaneous payment for two taxable years measured by the income of one year). If appellant did not commence intrastate business until it employed a salesman in California during the year ended June 30, 1956, as contended by respondent, then the taxes paid by it for years prior to the year ended June 30, 1957, are to be considered as income taxes rather than franchise taxes (Rev. & Tax. Code, Sec. 25401a), and no refund is due.

Respondent's regulations provide that foreign corporations do not become subject to the franchise tax simply because they maintain stocks of goods here from which deliveries are made pursuant to orders taken by independent dealers or brokers, but that such corporations are subject to the income tax (Cal. Admin. Code, tit. 18, reg. 23040(b).) For taxable years beginning before 1955, the cited regulation also provided that foreign corporations which make deliveries from stocks of goods in this state pursuant to orders taken by agents here are engaged in intrastate business and are subject to the franchise tax, Through an amendment intended to apply to taxable years beginning in 1955 and thereafter, the word "agents" was changed to "employees."

Appellant has not established that it was represented in this state prior to 1955 by either agents or employees, as distinguished from independent contractors. Appellant has cited no authority and we are not aware of any which would permit the imposition of the franchise tax for the privilege of doing business in California during the period when appellant had neither employees nor agents here. In our opinion, appellant did not commence business for franchise tax purposes until it hired a salesman in the latter part of 1955, as contended by respondent,,

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,

Appeal of No-Sag Spring Company

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 claim of No-Sag Spring Company for a refund of franchise tax and interest in the amount of $3,283.71 for the income and taxable year ended June 30, 1957, be and the same is hereby sustained.

Done at Sacramento, California, this 7th day of January, 1964, by the State Board of Equalization,

Paul R. Leake, Chairman

Geo. R. Reilly, Member

John W. Lynch, Member

_____, Member

_____, Member

ATTEST: H. F. Freeman, Secretary