



BEFORE THE STAT2 BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
ATLANTIS SALES CORPORATION)

Appearances:

For Appellant: Robert B. Ross and Gordon M. Weber,
Attorneys at Law

For Respondent: Wilbur F. Lavelle,
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 protest of Atlantis Sales Corporation to proposed assessments of additional franchise taxes in the amounts of \$3,891.26, \$4,851.59, \$3,571.35 and \$3,202.61 for the income years 1954, 1955, 1956 and 1957, respectively.

The appellant, Atlantis Sales Corporation, a Delaware corporation, is a subsidiary of R. T. French Company and has been doing business in California for many years. During the years in question, appellant was the exclusive sales organization of the parent corporation which manufactured, among other things, spices and extracts.

Appellant maintained sales offices and warehouses throughout the United States with a regional office in San Francisco and warehouses in San Francisco, Oakland and Los Angeles. The parent maintained its offices in Rochester, New York, and was not licensed to do business nor did it do business in California,

In 1951, appellant contracted with Charter Products Company, a subsidiary of Safeway Stores, to supply Safeway with its own name brand of spices and extracts, Crown Colony. The contract resulted from negotiations in California between the San Francisco office of Charter Products Company and appellant's San Francisco regional sales office, Technical and production personnel in New York assisted in determining such things as price, legality of the contract, and container and labeling designs. The subsequent servicing of the contract and the renewing of the contract were performed in San Francisco. The renewals were based on cost studies and similar services performed in New York. Approximately 25 percent of the Crown Colony products sold by appellant were shipped to California, with the balance being shipped to Safeway Stores and warehouses in other states in response to orders received in Rochester directly from the stores,

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Since appellant and its parent were engaged in a unitary business, appellant filed returns reporting the combined income and allocating a portion of it to California based upon the usual three-factor formula of property, payroll and sales. Each factor in this formula consists of a numerator, representing the portion of the property, payroll or sales attributable to California, and a denominator, representing the entire property, payroll or sales,

Appellant contends that only 25 percent of the Crown Colony sales should be included in the numerator of the sales factor because only this percentage of the sales activity occurred in California. Respondent has attributed to California 100 percent of the Crown Colony sales for purposes of the sales factor, contending that the sales activity leading to the sale of Crown Colony brand merchandise was carried on in this state.

Respondent has also included in the numerator of the property factor, as property attributable to California, merchandise in transit to California from New York, while appellant included it only in the denominator,

Pursuant to regulation 25101, title 18 of the California Administrative Code, "The sales or gross receipts factor generally shall be apportioned in accordance with employee sales activity of the taxpayer within and without the State,,,,. The same rule applies to repeat or mail order sales resulting from prior employee solicitation." In the Appeal of Pratt & Whitney Co., Cal, St. Bd. of Equal., May 24, 1961, CCH Cal, Tax Rep. Par, 201-751, P-H State & Local Tax Serv. Cal. Par. 13253, we discussed the meaning of "employee sales activity," The case involved the soliciting of special orders for products which were designed and manufactured outside of the state. We said that:

In order to give effect to the purpose of the sales factor and to make feasible its use as a distinct factor the selling activities which are taken into consideration must be a relatively restricted group of activities and cannot include everything which might conceivably influence the making of a sale,,,,. The activities of the design department .. are reflected in the payroll factor and, together with the manufacturing plants which are reflected in the property factor, give weight to the place where the products are manufactured.

In the present case the activities which were conducted in New York are reflected in the payroll factor, They give weight in the formula to the out-of-state production along with the manufacturing plants which are reflected in the property factor. If these activities are incorporated in the sales factor then the purpose of this factor, to balance against the property and payroll factors of a business, would be defeated. All of the direct negotiations which resulted in the sales were made through appellant's sales office in San Francisco, and the contract was renewed and serviced there. The fact that deliveries were made in other states does not compel the assignment of any of the sales outside of California for purposes of the sales factor. (Buick Motor Co. v. City of Milwaukee, Wis., 48 F.2d 801, cert., denied, 284 U.S. 655 (76 L.Ed. 5.56); Twentieth Century-Fox Film

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Corp. v. Phillips, 76 Ga. App. 825 (47 S.E. 2d 183); Maytag Co. v. Commissioner of Taxation, 218 Minn. 460 (17 N.W. 2d 37); Commonwealth v. Quaker Oats Co., 350 Pa. 253 (38 A. 2d 325), appeal dismissed, 324 U.S. 827 (89 L. Ed. 1395).)

Appellant has cited a published letter in which respondent stated that many sales to the United States Government arise from the combined efforts of many different persons' such as contact men, executives and engineers and that in such a case the sale is allocated to the places where the **activities** which resulted in the sale were conducted. (CCH State Tax Rep. Cal., Par. 12-402.94; P-H State & local Tax Serv. Cal, Par. 10535.42.) The letter also stated, however, that **"Just** what portion of any sale is to be allocated to a particular location of course depends upon the particular facts involved" and that **"the** solicitation rule applies to all cases where significant solicitation is present."

Respondent has been given wide discretion in allocating income within and without the state, (El Dorado Oil Works v. McColgan, 34 Cal. 2d 731 (215 P.2d 4), appeal dismissed, 340 U. S. 80 (95 L. Ed. 589); Pacific Fruit Express Co. v. McColgan, 67 Cal. App. 2d 93 (153 P.2d 607).) In any given case, a number of different methods of allocation may be supportable, but a taxpayer may not prevail simply by advocating one of those methods. One who attacks a formula of apportionment carries a distinct burden of showing by clear and cogent evidence that it results in extraterritorial values being taxed, (Butler Brothers v. McColgan, 315 J.S. 501 (86 L. Ed. 991).) Since **the only direct contact with the buyer was made in California by appellant's** local sales office, through which all negotiations with the buyer were carried on and since the contract was serviced and renewed in this state, there was a reasonable relation between the California activities and the resulting sales, We cannot say that respondent abused its discretion in determining that these sales were assignable to California.

As to the question of the inclusion of the goods in transit in the property factor, the case is exactly like the Appeals of Montgomery Ward & Co., Cal, St. Bd. of Equal., March 20, 1963, CCH Cal. Tax Rep. Par, 202-181, P-H State & Local Tax Serv. Cal, Par, 13310, We there held that merchandise in transit to California was properly included in the numerator of the property factor. We stated **that:**

As respondent points out, once goods have been placed in transit, the economic benefit to be derived from them is most closely connected with the point of destination, For the purposes of allocating income, the point of origin or points along the journey which goods in transit must travel are of little significance, as compared to the place where such goods will actually be put in use in the unitary business,

Appellant has cited regulation 25101, subdivision (b), title 18 of **the** California Administrative Code, which provides in part that : **"The** numerator of (the property factor) shall include all real and personal property owned by the taxpayer and used in the unitary business, except ships, to the extent

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such assets are located in this State;..." (Emphasis added,) This language, however, relates only to sea transportation companies. We believe we may safely assume that no substantial problem exists in relation to transitory property, other than ships, of sea transportation companies. Merchandising companies such as appellant, however, commonly have a considerable amount of their merchandise in transit, which calls for specific treatment,

Adhering to our decision in the Montgomery Ward appeal, we conclude that respondent's treatment of the merchandise in transit was proper.

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 protest of Atlantis Sales Corporation to proposed assessments of additional franchise tax in the amounts of \$3,891.26, \$4,851.59, \$3,571.35 and \$3,202.61 for the income years 1954, 1955, 1956, and 1957, respectively, 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

Richard Nevins, Member

_____, Member

ATTEST: H. F. Freeman, Secretary