

Appeal of Schmid Brothers, Inc.

The sole issue for determination is whether appellant is immune from taxation under Public Law No. 86-272 (73 Stat. 555 [1959], 15 U.S.C. § 381).

Appellant, a Massachusetts corporation, is a distributor of giftware. Its principal place of business is Randolph, Massachusetts. Appellant qualified to do business in California on January 2, 1973. It maintains permanent showrooms staffed by its employees in Los Angeles and San Francisco. Appellant has continuously maintained a full line of merchandise at these showrooms. Orders placed at these showrooms are filled from appellant's inventory maintained at Randolph, Massachusetts.

Appellant filed California tax returns and paid the tax due for the appeal years. Thereafter, appellant filed claims for refund on the grounds that its activities consisted of the solicitation of sales and related activities which were immune from taxation pursuant to Public Law 86-272. Respondent denied the claims and appellant filed this appeal.

Public Law 86-272, the effect of which is to prohibit a state from imposing a net income tax on income derived from interstate commerce when the only business activity conducted within the state consists of soliciting orders for the purchase of tangible personal property, provides, in pertinent part:

(a) No State ... shall have power to impose, ... a net income tax on the income derived within such State by any person from interstate commerce if the only business activities within such State by or on behalf of such person during such taxable year are ...

(1) the solicitation of orders by such person, or his representative, in such State for sales of tangible personal property, which orders are sent outside the State for approval or rejection, and, if approved, are filled by shipment or delivery from a point outside the State;

...

In line with Congressional intent, the courts and this board have strictly limited the statutory immunity from state taxation to solicitation or activities incidental thereto. (See, e.g., Olympia Brewing Co. v. Oregon Department of Revenue, 266 Ore. 309 [511 P.2d 837] (1973), cert. den., 415 U.S. 976 [39 L. Ed. 2d 872] (1974); Herff,

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Jones Co. v. State Tax Commission, 247 Ore. 404 [430 P.2d 998] (1967); Appeals of CITC Industries, Inc. and Bob Wolf Associates, Inc., Cal. St. Bd. of Equal., June 28, 1979; Appeal of Nardis of Dallas, Inc., Cal. St. Bd. of Equal., April 22, 1975.)

Appellant contends that its only activities in California are the solicitation of sales and activities related thereto. Therefore, appellant concludes that it is immune from taxation under Public Law 86-272. Appellant's argument ignores the existence of its permanent showrooms staffed by its employees in Los Angeles and San Francisco. We have previously determined that the presence of a permanent showroom or office staffed by the taxpayer's employees exceeded solicitation or activities incidental thereto, and precluded a claim of immunity under Public Law 86-272. (Appeals of CITC Industries, Inc. and Bob Wolf Associates, Inc., supra; Appeal of Nardis of Dallas, Inc., supra.) **For the** reasons set forth in **those** appeals, we must conclude that appellant is not immune from taxation by virtue of Public Law 86-272. Accordingly, respondent's action must be sustained.

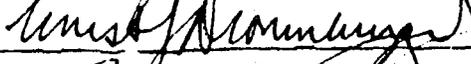
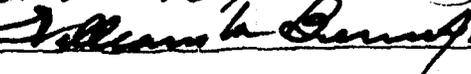
O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

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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 Schmid Brothers, Inc., for refund of franchise tax in the amounts of \$1,677, \$1,581 and \$2,682 for the income years 1974, 1975 and 1976, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this **21st** day
of May , 1980, by the State Board of Equalization.

 _____, Chairman
 _____, Member
 _____, Member
 _____, Member
_____, Member