



BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
RAMFJELD AND COMPANY, INC. )

For Appellant: M.Fjeldheim Nielsen  
President

For Respondent: Kathleen M. Morris  
Counsel

O P I N I O N

This appeal is made pursuant to section 25666 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Ramfjeld and Company, Inc., against proposed assessments of additional corporation income tax and penalties in the amounts and for the years as follows:

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<u>Income Years</u>	<u>Tax</u>	<u>Penalties</u>
1974	\$540.01	\$135.00
1975	\$540.01	\$135.00
1976	\$540.00	\$135.00

Appellant, a New York corporation with its principal place of business in that state, is engaged in the import-export business. During the **years in issue**, its business activity in this state was limited to the warehousing, in San Francisco, of imported canned fish for sale, on order, to United States military installations in California and Asia. **Appellant** does not maintain an office in this state, does not manufacture any products in California, and has no employees resident here. None of its officers or directors are domiciled in California.

Upon discovering that appellant rented warehouse space in San Francisco, respondent requested appellant to provide it with information concerning its business activities in California. After receipt of appellant's response, in which it referred to its warehousing and subsequent sales of imported canned fish, respondent advised appellant that it was subject to California's corporation income tax and requested it to file appropriate returns. Appellant's returns indicated income derived from California sources only to the extent that appellant had received income from its **sales** of canned fish to U.S. military installations in California; appellant specifically stated that its sales to such installations in Asia were excluded from California income. Respondent, lacking the information necessary to accurately determine appellant's California taxable income, estimated appellant's net income attributable to California to be \$6,000 more than reported by appellant for each of the years in issue and issued the proposed assessments of corporation income tax and penalties in issue. Respondent now concedes that the penalties should be abated.

We must initially determine whether appellant's multistate business was subject to California's corporation income tax. Appellant argues that the mere warehousing in this state of products later to be shipped to U.S. military bases in Asia did not constitute "doing business" in California and that, consequently, the income realized from its Asian sales were exempt from California's corporation income tax.

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Respondent, on the other hand, contends that appellant is subject to the corporation income tax since it derived income from, or attributable to, sources **within** this state.

Section 23501 of the Revenue and Taxation Code provides, in pertinent part: "There shall be imposed upon every corporation for each taxable year, a tax . . . upon its 'net income derived from sources within **this state . . . .**'" The phrase "income derived from sources **within this** state" is defined by section 23040 of the Revenue and Taxation Code, which states:

Income derived from or attributable to sources within this State includes income from tangible or intangible property located or having a **situs** in this State and income from any activities carried on in this State, regardless of whether carried on in intrastate, interstate or foreign commerce.

A corporation need not be "doing business" (as that term is defined in Revenue and Taxation Code section 23101) in California in order to be subject to the corporation income tax; it is sufficient that it be deriving income from sources within, or attributable to, California. (Rev. & Tax. Code, § 23501.) Income from California sources includes gains from the sale of real or tangible personal property located in California, income from ownership, control or management of such property in this state, and income from business or other activities carried on in California. (Rev. & Tax. Code, § 23040; Cal. Admin. Code, tit. 18, reg. 23040(a).)

Appellant's warehousing in California of canned fish imported from Iceland and Norway prior to shipment to United States military bases in California and the Far East was an integral part of appellant's import-export business and an "activity" within this state as contemplated by section 23040 of the Revenue and Taxation Code. (Cf. West Publishing Co. v. McColgan, 27 Cal.2d 705 [166 P.2d 861], affd., 328 U.S. 823 [90 L.Ed. 1603], reh. den., 329 U.S. 822 [91 L.Ed. 6991 (1946)].) Furthermore, the receipt of income in New York from the sale of products stored in and shipped from California, and under the ownership, control, and management of appellant while in this state, constitutes the receipt of "income from tangible property ... located or having a **situs** in this State" as contemplated

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by the same section. (Cf. Appeal of John H. Grace Company, Cal. St. Bd. of Equal., Oct. 28, 1980, wherein **we held** that an Illinois lessor of railroad cars, some of which occasionally passed through California in interstate commerce, did not **receive** "income from tangible property ... located or having a **situs** in this State," since the railroad cars were under the control of the bailees of the taxpayer's lessees when in California, and were not under the direction or control of the taxpayer.)

Revenue and Taxation Code section **25101** provides that when a multistate business, such as appellant, derives income from sources both within and without this state, the income derived from or **attributable to** California sources shall be determined in accordance with sections 25120-25140, inclusive, of the Revenue and Taxation Code, the Uniform Division of Income **for Tax Purposes Act**. Section 25128 of the Revenue and Taxation Code provides that a taxpayer's business income derived from sources both within and without California shall be apportioned to this state on the basis of a three-factor formula composed of sales, payroll, and property.

The sales factor, as are the payroll and property factors, is a fraction. Its numerator is the total sales of the taxpayer in California during the income year; its denominator consists of the taxpayer's total sales everywhere during the income year. (Rev. & Tax. Code, § 25134.) Sales of tangible personal property to the United States government are treated differently than are sales to other purchasers. Such sales are assigned to the numerator of the sales factor of the state from which the property was shipped. Tangible personal property is deemed to have been shipped from this state to the United States government when it is shipped from an office, store, warehouse, factory, or other place of storage in California. (Rev. & Tax. Code, § 25135; Cal. Admin. Code, tit. 18, reg. 25135, subs. (a) and **(b) (art. 2.5).**)

Based on the foregoing, it is clear that appellant, a multistate business deriving income from sources both within and without this state, was subject to California's corporation income tax on the income derived from or attributable to California sources as determined by the above described three-factor formula. Despite attempts by respondent to elicit from appellant the information necessary to accurately compute its

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California tax-liability in accordance with the formula, appellant failed to provide the required data. In order to determine the proper amount of appellant's income apportionable to California under the three-factor formula, respondent **must** have complete information regarding each of the three factors. Appellant, for example, did not provide information regarding its gross business income from all sources, its total payroll, or its worldwide sales. Instead, as noted above, it simply asserted that its California income was limited to that derived from its sales to military installations in this state. Unable to determine with certainty the portion of appellant's net income derived from or attributable to sources within this state, respondent estimated appellant's net income subject to taxation by California. When, as in this appeal, the taxpayer has the needed information but fails to produce it, he is not in a position to complain of adverse consequences. (Stanley Rosenstein, 32 T.C. 230 (1959); Appeal of Henrietta Swimmer, Cal. St. Bd. of Equal., Dec. 10, 1963.) Accordingly, as to the proposed assessments of additional corporation income tax, we conclude that respondent's action in this matter was correct.

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O R D E R

Fursuant 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 Ramfjeld and Company, Inc. against proposed assessments of additional corporation income tax and penalties as follows:

<u>Income Years</u>	<u>Tax</u>	<u>Penalties</u>
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be and the same is hereby modified in accordance with respondent's concession regarding the penalties. In all other respects, the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 6th day of January **1981**, by the State Board of Equalization, with Members: Dronenburg, Bennett, Nevins and **Reilly** present.

Ernest J. Dronenburg, Jr., Chairman  
William M. Bennett, Member  
Richard Nevins, Member  
George R. Reilly, Member  
\_\_\_\_\_, Member