



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
FISHER BODY ST. LOUIS COMPANY }

Appearances:

For Appellant: A. R. Franklin; S. H. Dunham of Haskins
& Sells
For Respondent: Chas. J. McColgan, Franchise Tax Commis-
sioner

O P I N I O N

This is an appeal pursuant to Section 25 of the Bank and Corporation Franchise Tax Act (Statutes 1929, Chapter 13, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of Fisher Body St. Louis Company, a corporation, to a proposed assessment of an additional tax in the sum of \$919.56 for the year 1931 based upon its return for the year ended December 31, 1930. For the same reasons that Appellant appeals from the action of the Commissioner in overruling its protest to a proposed assessment of an additional tax, the Appellant claims that the sum of \$1,839.13 paid by it as a tax for the year 1931 should be refunded to it.

The Appellant is a corporation organized under the laws of Delaware and has its principal office in St. Louis, Missouri. Although it is qualified to do business in California, Appellant claims that it does no intrastate business here. Insofar as California is concerned, Appellant's business consists of sending certain Chevrolet automobile body parts here from the East. The parts are assembled in Oakland, California, certain other parts added such as seat spring construction and cotton foundation for upholstery, and the bodies when completely assembled are painted and delivered to the Oakland branch of General Motors, pursuant to sales completed outside the state.

Appellant contends that its activities in manufacturing body parts, assembling those parts, and delivering automobile bodies to General Motors constitutes what is essentially interstate commerce; that the activity within the State of California is incidental to the entire range of operations conducted by it; and that consequently Appellant should not be regarded as engaging in intrastate business in California and hence should not be required to pay a franchise tax to California.

Unquestionably, if Appellant is engaged exclusively in interstate commerce and is doing no business in this State other than its interstate business, California cannot impose a franchise tax on it notwithstanding the fact that Appellant is

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qualified to do intrastate business here (Alpha Portland Cement Co. v. Massachusetts, 268 U.S. 203, holding that a state could not impose a franchise tax measured by net income on a foreign corporation doing an exclusively interstate business; People v. Alaska Pacific S.S. Co., 182 Cal, 202, holding that California could not impose a franchise tax on a foreign corporation having the right to do business here but not actually engaged in intrastate business here). Hence, the problem presented for our determination is that of deciding when interstate commerce, commenced by shipping automobile parts from points in the East to California, came to an end. If the interstate journey did not come to an end until the parts, in the form of completed bodies, were delivered to General Motors in California, we must hold that Appellant did not engage in an intrastate business in California, and hence, must hold that Appellant is not subject to the tax provided for by the Act. On the other hand, if the activities of Appellant in assembling the parts into bodies, adding certain new parts, and painting the bodies, constituted a break or interruption in the interstate journey, we must hold that Appellant was engaged in intrastate business here and should pay a tax for the year 1931 measured by the net income realized in 1930 from its activities engaged in here.

A case presenting a rather analagous situation to the situation presented in the instant appeal is that of Bacon v. Illinois, 227 U.S. 504. Bacon, the owner of certain grain purchased in the South and transported by rail to Illinois, had the grain removed to his private grain elevator in Illinois where, for his own purpose, he proceeded to inspect, weigh, clean, clip, dry, sack, grade or mix it. He had the power, under his contract with the carriers, either to change its ownership, consignee or destination or to restore the grain, after the processes mentioned, to the carriers to be delivered at the destination in another state according to his original intention. The question was whether the removal of the grain to his private elevator where the above mentioned processes were conducted, interrupted the continuity of the transportation and made the grain subject to local taxation in Illinois. The Supreme Court held that the interstate journey of the grain was interrupted and that the grain was subject to local taxation.

Certainly if the taking of grain from the custody of a railroad for the purpose of inspecting, weighing, cleaning, clipping, drying, sacking, grading or mixing it, effects a removal of the grain from interstate commerce, then the removal of automobile body parts for the purpose of assembling the parts into completed bodies adding new parts, and painting the completed bodies must be held to amount to a removal of the parts from interstate commerce. If the parts, when Appellant's activities in assembling them, etc., were no longer in interstate commerce, we are unable to comprehend on what theory it could be held that the Appellant in assembling those parts was engaged in interstate commerce. Furthermore, it is to be noted that in the instant appeal Appellant had no intention of continuing the transportation of the parts when assembled and painted in interstate commerce, but intended to deliver them to a branch of

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General Motors *in* California, whereas in Bacon v. Illinois, Bacon, although he removed the grain to his elevator for the purpose of inspecting, weighing, etc., intended to restore the grain to the carriers for the purpose of shipment to a destination in another state. Hence, it would seem the instant appeal presents even a stronger case for holding that interstate commerce had been interrupted *or* terminated than the case of Bacon v. Illinois.

Appellant's return for the year ended December 31, 1930 disclosed a net income from its assembling operations conducted in California in the amount of \$246,311.51. In this appeal, the Appellant contends that the portion of the total net income shown in its Oakland Division Accounts which may be attributed to business carried on in California was not over \$102,500, and asks that its tax for the year 1931 be reduced accordingly. The Appellant, however, has not made any satisfactory showing as to why the net income as shown by its Oakland Branch Accounts does not accurately represent its net income from the activities of the Oakland Branch. Nor has the Appellant shown why the "true" net income from the Oakland Branch activities should be \$102,500 or any other sum less than the entire amount shown as net income on its books of account and reported as net income to the Commissioner. Under these circumstances, we are of the opinion that we would not be justified in holding that the Commissioner erred in considering as net income of Appellant from its activities in California the sum of \$246,311.51 as reported by Appellant.

O R D E R

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

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the action of Chas, J. McColgan, Franchise Tax Commissioner, *in* overruling the protest of Fisher Body St. Louis Company, a corporation, to his proposed assessment of an additional tax of \$919.56 for the year ended December 31, 1930, be and the same is hereby sustained.

Done at Sacramento, California, this 11th day of October, 1932, by the State Board of Equalization.

R. E. Collins, Chairman
Fred E. Stewart, Member
Jno, C. Corbett, Member
H. G. Cattell, Member

ATTEST: Dixwell L. Pierce, Secretary