



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
KASSER EGG PROCESS CO.)

Appearances:

For Appellant: Oscar T. Holdal, of Holdal &
Richardson, San Francisco
For Respondent: Albert A. Manship, Franchise Tax
Commissioner

O P I N I O N

This is an appeal pursuant to Section 25 of the Bank and Corporation Franchise Tax Act (Chapter 13, Statutes of 1929) from the action of the Franchise Tax Commissioner in overruling the protest of Xasser Egg Process Co., to his proposed assessment of an additional tax in the amount of \$236.69 based upon its return for the year ended December 31, 1929.

The sole point raised by the Appellant is that the Commissioner erred in refusing to find that a portion of the business of the corporation is done without the State of California so 'as to entitle the Appellant to an allocation of its net income under Section 10 of the Act.

The facts are not controverted. The Appellant is the owner and manufacturer of certain patented machines used in connection with a patented process, also owned by it for the purpose of preserving eggs. These machines are manufactured at the Appellant's factory in San Francisco. The Appellant retains ownership of the machines, leasing them on a royalty basis to other persons and corporations in various states and in foreign countries. This royalty revenue constitutes the principal source of the Appellant's income. The Appellant is a California corporation with its principal place of business in San Francisco.

Approximately 60 per cent of the *income* of the Appellant during the year 1929 represented royalties from machines in use in points outside of California and it further appears that the value of the machines located at such points was above 40 per cent of the appellant's total assets. Personal property taxes were paid in various states on these machines. It does not appear that the Appellant has qualified to do business as a foreign corporation in any of these states or maintains an office at any point outside of California. Representatives of the Appellant are sent out from time to time to supervise the installation of the machines and to afford maintenance service. Payments of royalties under the contracts for the use of the machines appear to be made directly to the Appellant's office at San Francisco and all accounts

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with the users of the machines are maintained there.

While it is true that income was derived by Appellant from the operation of machines located outside of the state, the machines were operated not by the Appellant but by others to whom the machines were leased. The ownership of property located outside of the state obviously does not in itself constitute doing business outside of the state. In this view of the matter, coupled with the fact that Appellant maintains no office or place of business outside the state and has not qualified to do business in any of the states in which its machines are located, we are of the opinion that Appellant cannot be considered as having engaged in business outside of the state. Our conclusion, we think, is amply supported by the case of State v. American Refrigerator Transit Co. 151 Ark.581, 237SW78, in which it was held that a corporation which leased private refrigerator cars to a railroad company which used them in a certain state was not doing business in that state, and by the case of Savage v. Atlanta Home Insurance Company, 66NY 1105, holding that a foreign corporation which leased a boat to be run entirely within New York waters was not doing business in New York.

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, that the action of the Franchise Tax Commissioner in overruling the protest of Kasser Egg Process Company, a corporation, against a proposed assessment of an additional tax of \$236.69 under Chapter 13, Statutes of 1929, based upon the net income of said corporation for the year ended December 31, 1930, be and the same is hereby sustained.

Done at Sacramento, California, this 14th day of March, 1933, by the State Board of Equalization.

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

Attest: Dixwell L. Pierce, Secretary