



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
WALTON N. KOORE DRY GOODS COMPANY, INC.)

Appearances:

For Appellant: Wallace Sheehan, its Attorney; James L. Cockburn, Accountant for Price, Waterhouse and Company
For Respondent: Chas. J. McColgan, Franchise Tax Commissiонт

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, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of Walton N. Moore Dry Goods Company, Inc., to his proposed assessment of an additional tax of \$1,193 '79 based upon the return of income of the corporation for the fiscal year ended November 30, 1932.

The sole question presented by this appeal is whether the business of the Appellant for the fiscal year ended November 30, 1932, was done entirely within this State, in which case the tax for the fiscal year ended November 30, 1933, should be measured by the entire net income for the preceding fiscal year as proposed by the Commissioner, or whether a portion of the business for the said fiscal year was done without the state, in which case a portion of the net income should be allocated to business done without the state and not included in the measure of the tax.

The burden of establishing the existence of the facts upon which it may be found as a matter of law that a portion of its business was done without the state rests upon the Appellant. The record in this matter, however, contains no testimony or other evidence tending to establish those facts. It is true that the Commissioner did not question the correctness of certain figures relating to sales, commissions or salaries and the value of property reported by Appellant to the Commissioner and stated in the course of oral argument before the Board by counsel for Appellant and that it may not, accordingly, be unreasonable for the Board to assume that those figures are correct. These figures, however, while determinative of the amount of business, if any, done outside the state do not indicate the character of Appellant's operations outside the state and do not, accordingly, establish that Appellant's entire business was not done within this State within the meaning of the Bank and Corporation Franchise Tax Act.

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It is to be noted that not only does the record contain no testimony or evidence on the facts material and essential to the inquiry whether business was done by Appellant outside the state, such as whether the out-of-state offices occupied by sales representatives of the company were maintained by and in the name of the company or by and in the name of the representatives, whether the representatives of the company located outside the state were agents employed on a salary or commission basis or independent dealers or brokers operating on a commission basis, whether taxes on property assertedly held by the company outside the state were paid by the company or by its representatives, and whether the property or stock of goods of the company assertedly located outside the state was held by the company or held on consignment by sales representatives who acted as independent dealers or brokers on a commission basis, but that counsel for Appellant in the course of his oral argument stated that he did not have positive knowledge of these matters.

It is, accordingly, our opinion that Appellant has not shown by competent evidence the existence of the facts establishing that Appellant's entire business for the fiscal year ended November 30, 1932, was not done within this State within the meaning of the Bank and Corporation Franchise Tax Act.

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 Charles J. McColgan, Franchise Tax Commissioner, in overruling the protest of Walton N. Moore Dry Goods Company, Inc., a corporation, against a proposed assessment of an additional tax in the amount of \$1,193.79 based upon the return of income of said corporation for the fiscal yearended November 30, 1932, pursuant to Chapter 13, Statutes of 1929, as amended, be and the same is hereby sustained.

Done at Sacramento, California, this 9th day of November, 1936, by the State Board of Equalization.

R. E. Collins, Chairman
Fred Stewart, Member
Ray Edgar, Member

ATTEST: Dixwell L. Pierce, Secretary