



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
WOODWARD, BALDWIN & CO., INC.)

For Appellant: John A. Uhl, Treasurer
For Respondent: Burl D. Lack, Chief Counsel;
Crawford H. Thomas, Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to Section 25667 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Woodward, Baldwin & Co., Inc., against a proposed assessment of additional franchise tax in the amount of \$190.28 for the income year ended June 30, 1957.

Appellant is a New York corporation which does business **within California and elsewhere as a sales agent for a number of** cotton mills. In allocating a share of its net income to California for the income year ended June 30, 1957, it employed a three factor formula as follows:

	<u>Total within and without California</u>	<u>Total within California</u>	<u>Percent within California</u>
Property	\$ 110,262	\$ 1,118	1.0147827
Payroll	1,247,169	33,780	2.7085334
Sales	3,535,066	37,407	<u>1.0581703</u>
		Total percent	4.7814864
		Average percent	1.5938288

The property included in the formula consisted of office furniture and equipment and automobiles.

Respondent has eliminated the property factor from the formula, thus increasing the share of net income apportionable to California to 1.8833518 percent. That is the adjustment to which Appellant objects in this appeal.

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Under Section 25101 of the Revenue and Taxation Code, Respondent has wide discretion to choose a formula which will carry out the statute's purpose to achieve a proper apportionment of income. (El Dorado Oil Works v. McColgan, 34 Cal. 2d 731 [215 P.2d 4]; Pacific Fruit Express Co. v. McColgan, 67 Cal. App. 2d 93 [153 P.2d 607].) Normally, Respondent's practice is to omit the property factor in the case of a personal service organization such as Appellant, since property is not a material income producing factor in this type of business. (Cal. Admin. Code, Tit. 18, Reg. 25101, subd. (a).)

Appellant relies upon our decision in Appeal of Farmers Underwriters Ass'n, Cal. St. Bd. of Equal., Feb. 18, 1953, 1 CCH Cal. Tax Cas. Par. 200-205, 2 P-H State & Local Tax Serv. Cal. Par. 13129. We there sustained the use of the property factor with respect to a company engaged in selling insurance because the company owned and used in its business a substantial amount of property, including land and buildings.

In an effort to bring itself within the scope of Farmers Underwriters, Appellant states that it leases substantial quarters to which it has made a considerable amount of improvements. It also states that the figure of \$110,262, representing property owned by it, reflects book value and that the original cost of the property was over \$300,000.

We cannot attach any significance to property which is leased by Appellant or to improvements which are part of the leased property since only property owned by the taxpayer may be included in the allocation formula. (Cal. Admin. Code, Tit. 18, Reg. 25101, subd. (a); Appeal of Art Rattan Works, Cal. St. Bd. of Equal., Aug. 24, 1944, 2 P-H State & Local Tax Serv. Cal. Par. 13052; Appeal of Douglas Aircraft Co., Cal. St. Bd. of Equal., Dec. 18, 1952, 1 CCH Cal. Tax Cas. Par. 200-188, 2 P-H State & Local Tax Serv. Cal. Par. 13123.) And property owned by the taxpayer is correctly weighed according to its value, not its original cost. (Rev. & Tax. Code § 25101; Cal. Admin. Code, Tit. 18, Reg. 25101, subd. (a).) 'Book value, which reflects depreciation from original cost, is an appropriate measure. (Appeal of Sudden & Christenson, Inc., Cal. St. Bd. of Equal., Jan. 5, 1961, CCH Cal. Tax Rep. Par. 201-680, 2 P-H State & Local Tax Serv. Cal. Par. 13243.)

The value of the property owned by Appellant is very small in contrast with the figures representing its sales and payroll. Under these circumstances, the inclusion of a property factor in the allocation formula, weighted equally with the sales and payroll factors, could well result in distortion. Certainly we cannot say that Respondent, by following its usual practice with respect to personal service corporations-and excluding the property factor, has abused its discretion in this case. Appellant having failed to establish by clear and cogent evidence that

