

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
RIBLET TRAMWAY COMPANY        )

Appearances:

For Appellant:    Mr. Riner E. Deglow  
                                          Attorney

For Respondent:  Mr. Lawrence C. Counts  
                                          Tax Counsel

O P I N I O N

This appeal is made pursuant to section 26077 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Riblet Tramway Company for refund of tax in the amounts of \$494.71, \$133.63, \$1,295.18, and \$1,591.60 for the taxable years 1959 through 1962, respectively. Appellant paid a minimum corporation franchise tax for the taxable years 1960, 1961, and 1962, and the remainder in those years was paid as corporation income tax, Appellant now concedes that it is subject to tax for the taxable year 1959 because it actually performed assembly and installation work in this state during that year. Therefore, we shall only consider facts pertinent to the remaining years.

Appellant, a Washington corporation, designs, manufactures, and sells multi-line tramways and ski lifts. By filing its articles of incorporation with the Secretary of State it has been qualified to transact intrastate business in California since 1957. Its only office and manufacturing plant are located in Spokane, Washington, where all research, design, and manufacturing are performed.

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In the typical situation appellant received a written solicitation from a prospective customer. In response appellant requested such engineering information as soil samples of the lift site, profile of the site, size, and other specifications of the lift. The information was furnished by the customer's engineers or independent contractors with whom the customer had contracted. After analyzing the information appellant advised the prospective customer of the parts and materials required and the cost. If the customer then wished to buy, an order was placed with the Washington office. Upon acceptance of the order in Washington the lift was manufactured by appellant in Spokane and the required materials were shipped from the Washington plant to the vendee. Occasionally appellant's employees, including its president and vice president, came to California and solicited business but any orders resulting from such solicitation were allegedly forwarded to Washington for approval. Appellant's records indicate, however, that in June of 1961 appellant's vice president came to California to sign a contract at the Dodge Ridge Ski Resort.

After delivery of the parts and materials the erection of the entire ski lift would be performed by the vendee or by independent contractors hired by the vendee. The standard contract provided for inspection at no additional charge by a representative of appellant after the lift had been erected and was in running order and further provided that the lift was not to be operated commercially until the representative had approved the installation. Under the standard contract appellant warranted the products to be free from defects but the warranty was limited to replacing or repairing any defective parts which, within one year of delivery, were returned to appellant. The contractual right of inspection was provided in order to prevent any possible liability to third persons and to disclaim any liability under the parts warranty to the customer if an improper installation was not corrected by the customer. Appellant maintains that sometimes an inspection was not made despite the wording of the contract. The total number of man days spent in California by appellant's personnel for solicitation and inspection averaged about 33 days during each of the years in question.

Under the standard contract twenty-five percent of the contract price was paid when the contract was accepted; sixty-five percent was paid within thirty days of invoicing; and the final ten percent was paid within thirty days after the chair lift had been successfully tested. Title and ownership of the materials furnished under the contract remained in appellant until the contract price was paid.

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Appellant filed returns for the years in question, paying tax in accordance with the standard allocation formula. However, in 1964, appellant filed a refund claim for the years under consideration, contending that the commerce clause of the United States Constitution and a federal statutory provision, Public Law No. 86-272 (73 Stat. 555 (1959), 15 U.S.C. § 381, enacted September 14, 1959), precluded respondent from imposing the tax upon appellant's activity in this state. Based on the information before it respondent rejected appellant's constitutional arguments and concluded that appellant's activities went beyond those declared exempt in Public Law 86-272, 'The denial of the refund claim gave rise to this appeal.

It is well settled that the commerce clause does not prohibit the application of a net income tax to a person engaged exclusively in interstate commerce, provided there is no discrimination against that commerce and the allocation formula is reasonable. (Northwestern States Portland Cement Co. v. Minnesota (1959) 358 U.S. 450 [3 L. Ed. 2d 421]; West Publishing Co. v. McGraw-Hill (1962) 378 U.S. 518 [84 S. Ct. 1228, 12 L. Ed. 2d 861], aff'd, 328 U.S. 823 [90 L. Ed. 603].) This board has previously upheld the application of the corporation income tax to a taxpayer engaged exclusively in interstate commerce. (Appeal of The Lane Co., Inc., Cal. St. Bd. of Equal., Dec. 13, 1961.) Accordingly, even if appellant was engaged exclusively in interstate commerce during the years in question, there would be no merit to its constitutional arguments.

Public Law 86-272 provides in part:

(a) No State . . . shall have power to impose, . . . a net income tax on the income derived within such State by any person from interstate commerce if the only business activities within such State . . . during such taxable year are . . .

(1) The solicitation of orders by such person, or his representative, in such State for sales of tangible personal property, which orders are sent outside the State for approval or rejection, and, if approved, are filled by shipment or delivery from a point outside the State; . . .

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Respondent contends that in performing inspections appellant engaged in an activity for which immunity was not provided in the federal legislation. Respondent also stresses the fact that title was to remain in appellant until the contract price was fully paid.

We conclude that the inspection activities in California went beyond the statutory minimum established by Public Law 86-272. It follows that California was not precluded from imposing a net income tax on the income derived within this state by appellant, Appellant had the contractual right to inspect and to approve each installation before the lift was commercially operated. In enacting Public Law 86-272 the Congress of the United States carved out a specific area of immunity from state taxation and the courts have limited the exempted area to solicitation or activities incidental thereto. (See Cal-Roof Wholesale Inc. v. State Tax Commission, 242 Ore. 435 [410 P.2d 233]; CIBA Pharmaceutical Products, Inc. v. State Tax Commission, 382 S.W. 2d 645 (Mo. 1964).)

We believe that the inspections constituted a significant activity which was separate and distinct from the solicitation performed in this state. Accordingly, we conclude that respondent's action in disallowing appellant's claim for refund was proper.

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,

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 26077 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Riblet Tramway Company for refund of tax in the amounts of \$494.71, \$133.63, \$1,295.18, and \$1,591.60 for the taxable years 1959 through 1962, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 12th day of December, 1967, by the State Board of Equalization.

Paul R. Leach, Chairman  
John W. Reynolds, Member  
Robert M. ..., Member  
Paul ..., Member  
\_\_\_\_\_, Member

ATTEST: [Signature], Acting Secretary