



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
E. K. WOOD LUMBER COMPANY)

Appearances:

For Appellant: Sydney Rudy

For Respondent: J. J. Arditto, Franchise Tax Counsel; William
L. Toomey, Jr., Assistant Franchise Tax Counsel.

O P I N I O N

This appeal is made 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 upon the protest of E. K. Wood Lumber Company to his proposed assessment of an additional tax in the amount of \$1,370.74 for the taxable year ended November 30, 1938, based upon the income of Appellant for the year ended November 30, 1937. Upon consideration of the protest the Commissioner redetermined the additional tax to be \$1,280.44.

Appellant was incorporated under the laws of California and is engaged in the business of manufacturing and selling lumber at wholesale and retail in several states though largely in California, and has timber holdings in Washington and Oregon. It is admitted by Respondent that at one time the timber holdings, logging plants and equipment were used in connection with Appellant's unitary business but it is Respondent's position that certain of the properties outside California were not used during the year 1937 in connection with the unitary business and that under the facts the income and expenses connected therewith and the value thereof should not be considered in determining the California income which measures the tax. Respondent does not contend that temporary non-use would prevent allocation but considers that there was more than a temporary non-use.

From the evidence submitted, it appears that the income and expenses of all of the properties in question should be considered as income and expenses of the unitary business and that the properties should be considered as properties of the unitary business. The mill at Anacortes, Washington, was temporarily not used but was started up again in 1936 and ran during 1937.

The Hoquiam plant was shut down in 1933 and was not started up again because Appellant was able to buy lumber and it was more profitable to buy than to manufacture. It was not dismantled until 1938, and even then a large part of the machinery was taken to the other plants of Appellant and there used in the unitary business. Until

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it was dismantled it was available for use and presumably would have been used if the price at which Appellant could purchase lumber had advanced to a point at which it would have been moreprofitable to manufacture.

The timber lands were available to Appellant for use as necessity might require. Timber and timber lands can not be acquired on a moment's notice and it was necessary for Appellant to have some source of timber in reserve. While it did not itself cut logs for some time, it did have agreements with loggers whereby Appellant had a first option on such of the logs as it might wish.

Appellant contends that interest, taxes and bad debts and other expenses chargeable against the said "idle" properties outside California are allowable deductions in computing the net California income. While these expenses should be considered in determining the net income subject to allocation among the several states, they cannot be allocated entirely to California, regardless of whether or not Sections 8(b) and 9(d) as amended in 1937, were applicable for this taxable year. Section 10 provides for the allocation of income and cannot be disregarded as Appellant apparently would have us do. The tax is according to or measured by the net income derived from **business done** within this State. In determining the California net income, it would be absurd to deduct 100% of expenses incurred outside California in connection with a unitary business which is carried on in several states. For the reasons set forth, it is our opinion that Respondent has erred in the following respects: in computing the proposed assessment:

1. In increasing the income subject to allocation as follows:

Eliminating certain expenses at Anacortes, Washington	\$18,773.72
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Eliminating certain expenses at Hoquiam, Washington	\$14,263.65
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2. In eliminating from the property allocation factor:

Logging equipment at Anacortes	\$ 8,267.40
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Hoquism Plant	42,093.52
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Timber and land at Anacortes and Hoquiam	1,506,928.49
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3. In including in the numerator of the sales allocation factor, sales from points outside California to points outside California: 398,570.15

(Respondent concedes this last item)

ORDER

Pursuant to the views expressed in the opinion of the Board

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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, upon the protest of E. K. Wood Lumber Company in redetermining the additional tax to be \$1,280.44 for the taxable year ended November 30, 1938, be and the same is modified as follows:

The Commissioner is hereby directed (1) to treat the properties referred to in said opinion as unitary properties the value of which and the income and expenses of which are subject to allocation and to recompute the additional tax on that basis and in accordance with said opinion, and (2) to exclude said sum of \$398,570.15 from the numerator of the sales allocation factor. In all other respects the action of said Commissioner is hereby affirmed.

Done at Sacramento, California, this 15th day of July, 1943,
by the State Board of Equalization.

R. E. Collins, Chairman
J. H. Quinn, Member
Geo. R. Reilly, Member

ATTEST: Dixwell L. Pierce, Secretary