



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
R. L. POLK & CO. }

Appearances:

For Appellant: W. Cloyd Snyder, Attorney at Law.

For Respondent: W. M. Walsh, Assistant Franchise Tax Commissioner; James J. Arditto, 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 in overruling the protest of R. L. Polk & Co. to a proposed assessment of additional tax in the amount of \$392.34 for the taxable year ended December 31, 1937.

Appellant is a Delaware corporation engaged in the business of printing and publishing city directories and other statistical publications throughout the cities of the United States. It operates in forty-three states, the District of Columbia and the Territory of Hawaii. Revenues are derived from sales of directories and advertising therein, direct mail advertising service, printing, banker's encyclopedias and certain special services. The operations carried on entirely within California consist of the sales of directories and advertising therein. Offices are located in various states. The offices in California are located in the various cities or counties where the respective directories are published and in most cases the unit publishing the particular directory keeps its own books. An office maintained at Detroit, Michigan, for administration purposes acts as the central and coordinating office for all the R. L. Polk publications throughout the United States,

Appellant's return of income for 1936 was filed on a separate accounting basis, the tax being based on gross receipts from California operations less (1) direct expenses incurred and paid in California, and (2) a portion of the general administrative expense of the Detroit office. The Commissioner redetermined Appellant's net income from business done in this State through the use of an allocation formula pursuant to Section 10 of the Act. In making the formula computation for the allocation of income, the Commissioner included an item entitled "work in progress" in the property factor of the formula. The item is included in

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Appellant's inventory and is made up from certain costs representing amounts expended for such purposes as canvassers' salaries, engraving and art work, printing, proofreading and revising, scheduling salaries, compilation salaries and telephone service. These expenditures are made within a given year to keep Appellant's staff of employees busy in building up office records for the production of directories to be sold in an ensuing year. It has been stipulated by the Appellant and the Commissioner that the taxable allocable income of Appellant for the income year 1936 under the Bank and Corporation Franchise Tax Act is \$333,952.21.

The sole question for our consideration is the propriety of the action of the Commissioner in including the item "work in progress" as a factor in the allocation formula computation through which he determined Appellant's net income from business done in this State.

The Appellant contends that the item "work in progress" is an intangible and, therefore, not properly to be regarded as an inventory item or included in the allocation formula computation. This position is apparently based upon the theory that since Section 10 of the act mentions "value and situs of tangible property" as factors which may be considered by the Commissioner in making an allocation, he is precluded from considering intangibles as a factor. The Commissioner contends, on the other hand, that the statistics are Appellant's stock in trade and that it is this material which it sells and by which it is enabled to earn a profit. He compares the "work in progress" item to the inventory of a manufacturer and argues that since completed publications are included in the property factor of the formula, partially completed ones, constituting "work in progress", should also be included.

Although Section 10 mentions tangible property as an allocation factor, it does not follow by reason of that specific reference that intangible personal property is necessarily to be excluded from the allocation formula. The Section does not require the use of any particular factors. It merely lists five factors and authorizes the determination of net income from business done in this State through an allocation upon the basis of such factors." . . . or by reference to these or other factors.. ." We would not be warranted, accordingly, in upholding the position of the Appellant merely on the basis of a determination that the item "work in progress" is an intangible.

Even though it be assumed, then, that the item is an intangible, it is necessary for us to consider whether the Commissioner was justified in employing it in the allocation formula. Under the decision in Butler Brothers v. McColgan, 315 U. S. 501, the Appellant must establish by "clear and cogent evidence" that the formula of apportionment applied by the Commissioner resulted in the taxation of net income not derived from business done in this State. Appellant originally contended that its income from operations in this State should be determined on the basis of its separate accounting of its California business. This position,

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based on the decision of the California District Court of Appeal in the Butler Brothers case (102 P. (2d) 776), was, however, apparently abandoned in view of the reversal of that decision by the California Supreme Court (17 Cal. (2d) 664), which was affirmed by the United States Supreme Court.

So far as the "work in progress" is concerned, Appellant argued only that the item is an intangible and not an inventory item and that it is therefore not **includible** in the allocation formula. Appellant has in no way established by "clear and cogent evidence," as required by the Butler Brothers case, that as a result of the inclusion of the item, the formula applied by the Commissioner resulted in the taxation of income not derived from this State, Nor may it be said that the formula appears on its face to be unreasonable. In view of the nature of the Appellant's business, it is not implausible to regard the "work in progress" item as similar to the partially completed products of a manufacturer which would of course be included in the property factor of the allocation formula. In the light of these considerations, particularly the lack of evidence as to the unreasonableness of the method of allocation, the action of the Commissioner must in our opinion be sustained.

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 Chas. J. McColgan, Franchise Tax Commissioner, in overruling the protest of R. L. Polk & Co. to a proposed assessment of additional tax in the amount of \$392.34 for the taxable year ended December 31, 1937, pursuant to Chapter 13, Statutes of 1929, as amended, be and the same is hereby sustained.

Done at Sacramento, California, this 26th day of October, 1944, by the State Board of Equalization.

Wm. G. Bonelli, Member
Geo. R. Reilly, Member
J. H. Quinn, Member

ATTEST: Dixwell L. Pierce, Secretary