

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 018

June 25, 1958

FOREIGN CORPORATIONS: MAINTAINING A STOCK OF GOODS IN CALIFORNIA

Syllabus:

The maintaining of a small stock of goods, which are the result of refused C.O.D. orders, in this State by a foreign corporation is not alone sufficient to subject the corporation to the Corporation Income Tax.

A Company, a factory representative handling several lines, takes orders in California for glass manufactured by X Company, a foreign corporation, and the orders are shipped directly to the purchaser. Occasionally a customer refuses to accept a C.O.D. shipment and A Company then has it stored and later applies it to fill an order from another customer. It is evident that A Company is an independent dealer or broker and not an agent of X Company and that X Company conducts no other activities in this State that would subject it to the Bank & Corporation Tax Law. Advice is requested as to whether X Company is subject to the Corporation Income Tax on the ground that it maintains a stock of goods in California from which deliveries are made.

The Corporation Income Tax is applicable to foreign corporations which maintain stocks of goods in the state from which deliveries are made pursuant to orders taken by independent dealers or brokers. In this instance orders taken by A Company are sometimes filled out of refused goods in storage here. But the occasional act of storing refused goods in California hardly seems to amount to "maintaining a stock of goods" here.

The ordinary meaning of "to maintain" is to continue or preserve, to keep up. It denotes continuous or recurring acts approaching permanence. By reasonable interpretation the statute is directed at foreign corporations who locate a merchandise inventory in the state for the avowed purpose of filling local orders expeditiously and who replenish the inventory periodically in order to keep it up to the level required by their business activity.

In the present situation there is no continuity of action and the principal purpose of causing goods to be stored in the state is not to have a local stockpile from which to fill orders. It is a concomitant of C.O.D. business that some shipments will not be taken up by the party who placed the order and the course taken by A Company is designed to minimize the resulting expense and inconvenience to X Company.

The facts show that the amount of goods refused in C.O.D. transactions is

only a minute portion of X Company's gross business so no appreciable portion of the local orders could be filled out of the refused goods stored here.

It would seem unrealistic to say that X Company has made an income-producing investment in California represented by property it has located here. Therefore, so long as the transactions in question retain their isolated, infrequent, and relatively insignificant character, the Corporation Income Tax should not be applied.

DRAFT