

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 073

June 27, 1958

CORPORATION INCOME TAX: CORPORATIONS SUBJECT

Syllabus:

Agents of a foreign corporation solicit orders in this state. The goods ordered are shipped to the agent in this state but are earmarked for a particular purchaser and are stored in public warehouses until paid for and picked up by the purchasers. No other stock of goods is maintained here by the corporation. Under these facts the corporation is subject to the Corporation Income but not to the Franchise Tax.

Taxpayer, a foreign corporation, qualified to do business in California in November, 1952. Prior to that time taxpayer had maintained a sales office with four employees and leased public warehouse facilities here. Goods were shipped to taxpayer by the manufacturer, in a foreign country, pursuant to firm orders from local dealers, each being earmarked for a particular dealer from the time of shipment. The goods were stored in the California warehouses until paid for and picked up by the dealers. After November, 1952 taxpayer for the first time began maintaining its own stock of spare parts and goods not appropriated to any dealer. It is clear that the taxpayer was then doing intrastate business and was subject to the franchise tax. Advice is requested whether prior to November, 1952, the date of qualification, taxpayer was subject to franchise tax or the corporation income tax.

The great weight of authority is that the solicitation of orders for goods within a state by the agent of a foreign corporation, and the shipment of goods thus sold from outside the state to the corporation's agent in the state for local delivery, and the delivery thereof by the agent to the purchasers, constitute interstate business rather than doing business within the state (See 60 ALR 1020-1030. Those decisions which hold otherwise where the local agent breaks the original package before delivery to the purchaser would not apply here). The intercession of the local agent in the delivery phase of the transaction does not take it out of interstate commerce where the local agent performs no substantial act upon the goods to prepare them for the purchaser's use. The collection of the purchase price by the local agent does not alter the rule.

This rule does not conflict with Regulation 23040(b). In the present situation, taxpayer did not maintain a stock of goods from which deliveries were made. The goods were in public warehouses and appropriated to particular dealers to fill pre-existing orders. It was not until after qualification that taxpayer began

maintaining a stock of goods and spare parts out of which future orders could be filled. Therefore, for the period prior to November, 1952, taxpayer would be subject to the corporation income tax, since the imposition of that tax is upon income from sources in California without regard to the doing of intrastate business and taxpayer had income from California sources (activities and property).

WITTED
BRANN