

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 198

April 16, 1957

DOING BUSINESS: ISOLATED OR OCCASIONAL ACTS

Syllabus:

Isolated or occasional acts within this State do not constitute "doing business" in this State if such acts are not connected with the taxpayer's ordinary course of business.

X Corporation was incorporated under Oregon law to engage in the manufacture of wood products. X maintains plants at five locations in Oregon and Washington. Although X's entire operations involved the production of fir products, X began purchasing redwood tracts in California in 1943. Six such tracts were purchased in California between 1943 and 1946. X states that the tracts were acquired solely as investments of surplus company funds. X received a minimum amount of income from these tracts through fern picking contract rights, fishing rights, rights of way granted to utility companies and adjoining tract owners, grazing rights, and income from sales of timber cut during the development of the rights of way. Caretakers, employed to look after the properties, were assigned the duty of collecting the income from the fishing, grazing and fern picking contracts. During the income year ending July 31, 1948 X sold a section of its California timber and began construction of a redwood plywood mill in California. The mill was completed and began operations on November 1, 1948. Advice has been requested as to when X began doing intrastate business in California so as to become subject to Chapter 2 of the Bank and Corporation Tax Law. Held: X began doing business in California during the income year ending July 31, 1948.

Section 23101 defines "doing business" as "actively engaging in transaction for the purpose of financial or pecuniary gain or profit". To satisfy the requirements of due process, however, occasional or isolated acts are sufficient to constitute doing business only if such acts are within the corporation's ordinary course of business and are coupled with an intent to perform other such acts.

The acquisitions of the redwood tracts in the instant case were isolated or occasional acts unconnected with X's main corporate purpose. X's tax returns consistently indicated that the timber was acquired for investment purposes only and the tracts were purchased before it was decided to integrate redwood with its wholly fir line of products. Since the acquisition of the California properties was not in connection with taxpayer's regular trade or business the mere ownership of the land itself was not sufficient to constitute doing business. Conference Free Baptists v Berkeg, 156 Cal 466, Davies v Mt. Gaines

Mining & Milling Co., 104 Cal App. 730, O'Connell Gold Mines Ltd v Baker, 63 Cal App. 2d 384. Since the properties were not acquired for use in X's regular trade or business, it would appear that the acts connected with these properties which produced a relatively small amount of income would have no effect on our conclusion that taxpayer was not doing business.

During the income year ending July 31, 1948, however, when X began the construction of the plywood mill in California, the corporation appears to clearly have begun doing business. This was an act directed toward fulfilling the purpose of the corporation. It was the forerunner of subsequent acts which would lead to continuous corporate activity within the State. In our opinion X began doing business at that time.