

State of California

Board of Equalization

Memorandum

To: Mr. Gene Mayer
(redacted)

Date: January 30, 1985

From: Eric Eisenlauer

Subject: Situs of Communication Satellites for Assessment Purposes

This is in reply to your memo to Richard Ochsner dated December 11, 1984 in which you ask that we review *Communications Satellite Corp. v. Franchise Tax Board* (1984) 56 Cal.App.3d 726 for the possibility it may support Board assessment of satellites which are in direct communication with the earth station location in California. A review of the case indicates that the plaintiff, Comsat, is a District of Columbia corporation with its principal place of business in Washington, D.C. It is a member of an international consortium which owns and operates commercial satellites orbiting in outer space. The satellites in question are launched into space from Cape Canaveral, Florida. Each satellite is located in outer space in synchronous orbit more than 22,000 miles over a fixed point on the equator. A synchronous orbit is one in which the speed of the satellite in orbit is synchronized with the speed of the earth's rotation so that the satellite appears to remain stationary above a fixed point on the earth. The satellites are positioned over the Atlantic, Pacific and Indian Oceans and never pass over California even during launch. The California earth station communicates with satellites operating in the Pacific Ocean region.

As indicated in your memo, the Court held, among other things, that the value of some of the satellites was properly included in the numerator of a fraction used in calculating the property factor for purposes of income allocation. The applicable statutory provisions are Revenue and Taxation Code¹ Sections 25129 and 25137. Section 25137 provides in effect that the Franchise Tax Board may deviate from the "allocation and apportionment provisions" of the Uniform Division of Income for Taxation Purposes Act if their application produces results which do "not fairly represent the extent of the taxpayer's business activity in this state"; and that the deviation, "if reasonable," may consist of "(d) the employment of any other method to effectuate an equitable allocation in apportionment of the taxpayer's income" in California. Section 25129 provides in relevant part that the numerator of the property factor fraction shall include the "value of the taxpayer's real and tangible personal property owned...and used in this state during the income year."

¹ All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

Comsat contended that the numerator of the property fraction should exclude the value of any of the satellites because the satellites are not located "in this state". In rejecting this contention, the court stated at page 748:

"The pertinent language of Section 25129 defining the numerator of the property fraction refers to property 'owned' and 'used' in this state, not to property 'located' here. Moreover, the satellites are not located in California but the Jamestown earth station is. Because it is, Comsat is conducting 'business activity' and generating income in California. There is an invisible, but apparently continuous and very real, connection between the earth station and the satellites. The earth station has a value only because this connection exists, and it is otherwise of no value. Without the connection, satellites function in outer space to no purpose involving this state. With it, they function in California. The ascription of a 'function in California' to the satellites is a recognition of the realities of telecommunications and space technology, not an indulgence in fiction.

"Because Comsat owns an interest in the satellites, and because they function in California at and through the Jamesburg earth station, we conclude that they are 'tangible personal property owned...and used in this state' by Comsat within the meaning of Section 25129...Comsat's exclusion of their value from the numerators of its property factor fractions therefore produced results which, for purposes of the factor, did not 'fairly represent the extent of the taxpayer's business activity in this state' within the meaning of Section 25137 ... This being so, the statute authorized the Board to calculate Comsat's property factors by using 'any other method' which was 'reasonable' and would 'effectuate an equitable allocation and apportionment of the taxpayer's income' to California."

With respect to jurisdiction for property tax purposes, Section 721 provides in part that "[t]he Board shall annually value and assess all of the taxable property within the state that is to be assessed by it pursuant to Section 19 of Article XIII of the Constitution..." (Emphasis added.) Section 19 requires that such "property shall be subject to taxation to the same extent and in the same manner as other property." For all property taxed by local government, that means "in the county, city, and district in which it is situated" (Article XIII, Section 14 of California Constitution). The term "situated" connotes a more or less permanent location or situs and the requirement of permanency must attach before tangible property which has been removed from the domicile of the owner will attain a situs elsewhere. Brock & Co. v. Board of Supervisors (1939) 32 Cal.App.2d 550. It would be

unconstitutional for California to tax real property or tangible personal property lying beyond its borders. Great Atlantic and Pacific Tea Company v. Grossjean (1936) 301 U.S. 412. The rationale for such a rule was stated by the Supreme Court in Curry v. McCanless (1938) 307 U.S. 357, 364, 365:

"When we speak of jurisdiction to tax land or chattels as being exclusively in the state where they are physically located, we mean no more than that the benefit and protection of laws enabling the owner to enjoy the fruits of his ownership and the power to reach effectively the interest protected, for the purpose of subjecting them to payment of a tax, are so narrowly restricted to the state in whose territory the physical property is located as to set practical limits to taxation by others. Other states have been said to be without jurisdiction and so without constitutional power to tax tangibles if, because of their location elsewhere, those states can afford no substantial protection to the rights taxed and cannot effectively lay hold of any interest in the property in order to compel payment of the tax."

Although the satellites in question were tangible personal property owned and used in California for purposes of Section 25129, they were not located here. Under the foregoing rules, it is clear that jurisdiction of a state to subject property owned by a non-domiciliary to taxation requires that the property be located within the state. Since the satellites in question are not and never have been located in California, they are not subject to taxation in California.

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