



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
UNITED LINEN SUPPLY COMPANY)

OPINION ON PETITION FOR REHEARING

In its petition for rehearing the Appellant contends, among other arguments which we have already considered, that we erred in stating that the Franchise Tax Board and not this Board is given discretion in choosing a formula to determine the California income of a unitary business.

The Franchise Tax Board is empowered in its discretion to choose a formula fairly calculated to achieve a proper apportionment of income (El Dorado Oil Works v. McColgan, 34 Cal. 2d 731, dism'd. 340 U.S. 801). It is settled that the formula here employed, consisting of the factors of property, payroll and sales, is presumptively fair as applied to a unitary business and that in order to prevent its application by the Franchise Tax Board the burden is on the taxpayer to produce clear and cogent evidence that it results in the taxation of extraterritorial values (Butler Brothers v. McColgan, 17 Cal. 2d 664, affd. 315 U.S. 501; Edison California Stores, Inc. v. McColgan, 30 Cal. 2d 472; El Dorado Oil Works v. McColgan, supra; John Deere Plow Co. v. Franchise Tax Board, 38 Cal. 2d 214, appeal dismissed 343 U.S. 939).

The Appellant has shown that competition was keener in California, requiring additional and more expensive services leading, as reflected by separate accounting data, to a lower rate of return here than in other states. A substantially identical showing has been held insufficient to establish the invalidity of the formula in John Deere Plow Co. v. Franchise Tax Board, supra.

It has been shown by the Appellant that the rate of profit in California as reflected by separate accounting prior to its affiliation with corporations elsewhere was much lower than the rate of profit attributed to California under the formula employed by the Franchise Tax Board after the affiliation. This comparison, relying as it does on separate accounting, cannot impeach the formula (Butler Brothers v. McColgan, supra).

Appellant has also shown that the formula would allocate less income to certain other states than it allocated to California in particular years when the receipts in other

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states *were* greater and the property and payroll less than in California. The formula will, of course, allocate less income to any state in which the average of property, payroll and sales is less than in California. A demonstration of this fact cannot show that the formula is invalid.

The contention is made that the factors affecting income in the linen supply business are standardization, regularity of delivery, continuity of customers, usable life of linens and competition. The formula, however, need not incorporate every factor affecting income (El Dorado Oil Works v. McColgan, supra). It has not been established by competent proof that the factors of property, payroll and sales do not properly reflect the income,

It has also been argued by the Appellant that the business should not be considered unitary, at least for the years prior to 1949. We considered in our prior opinion all of the evidence then presented on this point and found that the business was unitary for the income years ended March 31, 1941 to March 31, 1951, inclusive. No additional evidence has been offered.

ORDER ON PETITION FOR REHEARING

Upon consideration of the petition for rehearing filed under Section 25667 of the Revenue and Taxation Code by United Linen Supply Company in the Matter of the Appeal of said United Linen Supply Company from the action of the Franchise Tax Board on its protests to proposed assessments of additional franchise taxes in the total amount of \$73,878.09 for the income years ended March 31, 1941, to March 31, 1951, inclusive, and for the reasons expressed in the Opinion of the Board on file in this proceeding, it is ordered that said petition be and the same is hereby denied and that the order of the Board of February 19, 1958, be and the same is hereby affirmed.

Done at Sacramento, California, this 15th day of September, 1958, by the State Board of Equalization.

Geo. R. Reilly Chairman

Paul R. Leake, Member

Robert E. McDavid, Member

J. H. Quinn, Member

Robert C. Kirkwood, Member

ATTEST: Ronald B. Welch, Acting Secretary