75-SBE-063

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
GENERAL DYNAMICS CORPORATION)

OPINION ON PETITION FOR REHEARING

On June 3, 1975, we sustained the action of respondent Franchise Tax Board on the protest of appellant General Dynamics Corporation against a proposed assessment of additional corporate franchise tax in the amount of $437,629.76 for the taxable year 1968. A timely petition for rehearing has been filed by appellant pursuant to section 25667 of the Revenue and Taxation Code.

The sole issue for determination in this matter was whether a gain realized by appellant from the sale of stock in 1967 constituted unitary business income apportionable to California by formula, or nonbusiness income specifically allocable to its New York situs.

The transaction from which the gain in question ultimately accrued involved appellant's purchase and resale

of seven aircraft. The purchase price of the aircraft was contingent upon the ultimate resale price received by appellant. The parties to the purchase realized that appellant might receive securities upon the resale of the aircraft and provided, by contract, that such securities should be reduced to cash as soon as practicable and the amount realized used to compute the final contract price for the aircraft. Upon resale appellant did, in fact, acquire stock in partial payment of the purchase price. As required by the terms of the contract appellant sold the shares and realized a substantial gain.

In our prior opinion we held that the acquisition, retention, and disposition of the stock was so inextricably entwined with appellant's unitary business operations involving the purchase and sale of the aircraft that the gain accruing to appellant from the conversion of the stock to cash constituted unitary business income apportionable to California by formula.

Appellant's original position, which has not changed, was that any unitary aspects of the transaction terminated when appellant received the stock; thereafter, the stock was held as an investment. Since holding stock for investment purposes was not part of its unitary business, appellant maintained that the gain from the sale of the stock was nonbusiness income specifically allocable to its New York source.

In its petition for rehearing appellant argues that we erroneously determined, as a matter of fact, that the stock was not held for investment purposes and that the gain from its sale was not investment income. In support of its position appellant maintains that our determination was controlled by the erroneous conclusion that the delay between the acquisition of the stock in 1963 and its ultimate disposition in 1967 was involuntary and beyond appellant's control due to certain restrictions on the disposition of the stock contained in a voting trust agreement. Appellant maintains that there were no such restrictions contained in the voting trust agreement. In support of its position appellant has submitted a copy of the agreement.

Assuming, for the sake of argument, that appellant's right to dispose of the shares was in no way restricted by the voting trust, appellant still cannot prevail. The holding in our prior opinion was controlled, not by the existence of any restrictions contained in the voting trust, but, by the determination that the acquisition, retention, and disposition of the stock was inextricably entwined with appellant's unitary business. As we stated in our opinion in this matter:

> [I]t is readily apparent that the purchase and sale of the seven aircraft were integral parts of appellant's unitary business, and that all of the income from that sale, including the gain ultimately realized on the sale of the Airlift stock, arose in the ordinary course of that sale. Therefore, the entire amount of income received from this transaction should be included in unitary income. This conclusion is emphasized by the fact that the entire cost of the aircraft sold, including that portion of the gain on the sale of the stock which was paid to SWISSAIR and SAS pursuant to the agreement, was charged against unitary income. [Citation.] The fact that part of the consideration received from the resale of the aircraft consisted of stock, the ultimate disposition of which resulted in a gain, does not alter this determination. As we have noted above, the labels normally attributed to such income is of no assistance in determining whether the income is business or nonbusiness income. The critical inquiry is whether the income arose in the main course of appellant's unitary business. ...

In accordance with the views expressed above, we conclude that appellant's petition for a rehear ing must be denied.

Appeal of General Dynamics Corporation

ORDER

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 25667 of the Revenue and Taxation Code, that the petition for rehearing of the appeal of General Dynamics Corporation from the action of the Franchise Tax Board on its protest against a proposed assessment of additional corporate franchise tax in the amount of $437,629.76 for the taxable year 1968, be and the same is hereby denied and that our order of June 3, 1975, be and the same is hereby affirmed.

Done at Sacramento, California, this 17th day of September, 1975, by the State Board of Equalization.

John W. Lynch, Chairman

William M. Bennett, Member

George R. Reilly, Member

Richard Nevins, Member

_____, Member

ATTEST: W. W. Dunlap, Executive Secretary