



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
INTERSTATE REAL ESTATE TRUST)

Appearances:

For Appellant: Steinhard, Goldberg, Feigenbaum & Ladar, Attorneys at Law
For Respondent: Burl D. Lack, Chief Counsel; Crawford H. Thomas, Associate Tax Counsel.

O P I N I O N

This appeal is made pursuant to Section 25667 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the protests of Interstate Real Estate Trust to proposed assessments of additional corporation income tax in the amounts of \$204.00, \$1,530.00 and \$340.00 for the years 1943, 1944, and 1945, respectively. All of these sums are exclusive of interest.

The Franchise Tax Board has proposed for each year, in addition to the tax and interest, a penalty of 25 percent for delinquent filing of the returns, and a penalty of 25 percent for failure to furnish required information. On December 21, 1956, Appellant paid the tax, interest thereon to September 16, 1956, and penalties, in the aggregate amount of \$5,956.80 for the years involved. Under the provisions of Section 26078 of the Revenue and Taxation Code, this appeal will be treated as an appeal from the denial of claims for refund of that amount.

Appellant was a Massachusetts trust having its principal place of business in Boston. It purchased and sold real estate in several states, including California. It also received income from the rental of the properties purchased for resale. It filed no tax returns in California until after it had received a formal demand that it do so for the taxable years 1943 to 1945, inclusive. These returns reported interest and rental income and "profits on equities in real estate" and large losses from the sale of real estate. Each return showed a substantial net loss from Appellant's entire operations and no tax was paid. Nothing contained in the returns indicated the sources from which the various items of income and loss were derived.

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The Franchise Tax Board upon several occasions made written demands upon Appellant for schedules as to the income, deductions, and net income from California sources. The Franchise Tax Board then issued the notices of additional corporation income tax which are at issue herein and added penalties for delinquent filing and for failure to submit information requested,

The Appellant argues that under cases such as Butler Brothers v. McColgan, 17 Cal. 2d 664, aff'd. 315 U.S. 501, it must be considered to be engaged in a unitary business, and that since its entire operations resulted in a loss in each of the years in question, no net income is allocable to California.

The statement by Appellant that it was engaged in the buying, selling and rental of real estate and that all of its operations were controlled from the head office in Boston, where all of its records were maintained, is the sole basis for its contention that it was engaged in a unitary business. Appellant asserts that one of the tests used to determine the unitary nature of a business is whether the operations within the State depend upon or contribute to the operations out of the State. It has not, however, demonstrated how the purchase, sale and rental of real estate in California depends upon or contributes to its out-of-State operations. Upon the facts presented we are unable to conclude that Appellant was engaged in a unitary business.

Appellant has not alleged that the assessments on a separate accounting basis are incorrect or that the penalties are improper.

Under the circumstances, we must sustain the position of the Franchise Tax Board,

O R D E R

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 26077 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claims of

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Interstate Real Estate Trust for refund of corporation income tax in the amounts of \$204.00, \$1,530.00 and \$340.00 for the years 1943, 1944 and 1945, respectively, together with penalties and interest thereon, be and the same is hereby sustained,

Done at Sacramento, California, this 19th day of February, 1958, by the State Board of Equalization.

Geo. R. Reilly, Chairman

J. H. Quinn, Member

Paul R. Leake, Member

Robert E. McDavid, Member

Robert C. Kirkwood, Member

ATTEST: Dixwell L. Pierce, Secretary