

Appeal of Trans World Airlines, Inc.

we have been told only that the other party to the contract was retained as general manager, some of Appellant's personnel were transferred to TACA and Appellant sold TACA airline tickets. These tickets represented separate fares and Appellant did not sell single tickets to cover transportation over both its own and TACA's routes.":

In 1945 Appellant abandoned its plan for expansion and terminated the contract under which it held "working control" of TACA. It sold the TACA stock in 1949 at a loss of \$1,100,000. The Franchise Tax Board allocated the loss specifically to sources outside California on the ground that the stock did not have a taxable situs in California;

In reliance upon Holly Sugar Corporation v. Johnson, 18 Cal. 2d 218, Appellant contends that when a corporation "buys a substantial block of stock of a corporation engaged in the same commercial activity as that of [the] buyer ... with the sole purpose being to eventually absorb such corporation into its integrated activities and thereafter selling such stock at either a gain or loss, such gain or loss should be treated as part of the allocable income or loss of such taxpayer; "

Holly Sugar Corporation v. Johnson, supra, was before the court on a demurrer. Explicit in the decision, however, was the determination by the court that the statement of facts supported an inference that the stock in question acquired a situs in this State, which in turn "fixed the situs of the stock loss in California and established the propriety of the claimed deduction" from the measure of the California franchise tax. Appellant has neither alleged nor attempted to establish that the stock under consideration in this appeal had, at the time of its sale in 1949, a situs in this State. We are of the opinion, accordingly, that a gain or loss resulting from the sale was attributable to sources without the State; See Southern Pacific Company v. McColgan, 68 Cal. App. 2d 48; Pacific Western Oil Corporation v. Franchise Tax Board, 136 Cal. App. 2d 794.

ORDER

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

Appeal of Trans World Airlines.;" Inc.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 25667 of the Revenue and Taxation Code that the action of the Franchise Tax Board in denying the protest of Trans World Airlines, Inc., to a proposed assessment of additional franchise tax in the amount of \$3,320.79 for the income, year 1949 be and the same is hereby sustained.

Done at Sacramento, California, this 7th day of May, 1958, by the State Board of Equalization.

George R. Reilly, Chairman

Paul R. Leake, Member

J. H. Quinn, Member

Robert E. McDavid, Member

_____, Member

ATTEST.: Dixwell L. Pierce, Secretary