62-SBE-045

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)
NEW YORK FOOTBALL GIANTS, INC., ET AL.)

Appearances:

For Appellants: Marshall E. Leahy, Attorney at Law

For Respondent: A. Ben Jacobson, Associate Tax Counsel

OPINION

These appeals are made pursuant to Sections 25667 and 26077 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying protests against proposed assessments of additional tax and in denying claims for refund of tax in the amounts and for the years as follows:

Appellant	Taxable Year	Amount
Proposed assessments of corporation income tax (Chapter 3)		
New York Football Giants; Inc.	1956	$ 25.86
	1957	64.03
	1958	35.59
Cleveland Browns, Inc.	Ended June 30, 1954	59.10
	Ended June 30, 1955	45.21
	Bnded June 30, 1.956	91.94
	Ended June 30, 1957	37.28
	Ended June 30, 1958	82.65
	Ended June 30, 1959	195.61
Philadelphia Eagles, Inc.	1950	34.03
	1953	6.86
Proposed assessments of franchise tax (Chapter 2)		
Pro-Football, Inc.	Ended July 31, 1951	91.06
	Ended July 31, 1952	91.06
	Ended July 31, 1953	55.20
	Ended July 31, 1954	605.63
	Ended July 31, 1957	146.80
	Ended July 31, 1958	82.26
	Ended July 31, 1959	142.43
	Ended July 31, 1960	159.31

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Appellant		Amount
Claim for refund of corporation income tax (Chapter 3)		
Pittsburg Steelers Sports, Inc.	1955	25.23
Claims for refund of franchise tax (Chapter 2)		
Detroit Football Company	1952	38.28
	1954	62.17
	1955	132.96
		141.09
	1956	62.82
	1958	57.05
	1959	149.94174.30
Baltimore Football, Inc.	1955	22.72
	1956	95.64
	1957	78.20
	1958	89.45
	1959	249.46

Each Appellant is a corporation engaged in the operation of a professional football club as a member of the National Football League. The league is divided into two conferences, the Eastern Conference and the Western Conference. Appellants' teams play in various states, including California. The home stadium of each Appellant is outside of this State.

When a regularly scheduled game is played, the visiting club receives a minimum of $30,000 or 40 percent of the gate receipts after deductions for admission taxes, 2 percent for operation of the league and 15 percent as an allowance for the expenses of the home club in staging the game. The balance is retained by the home club. In a preseason exhibition game, a game to play off a tie in a conference after a season's play and in a game between the champions of each conference, the game receipts are divided equally between the competing clubs after certain specified deductions are made.

Each Appellant determined its net income from sources within California by use of an allocation formula employing two factors, payroll and sales. The denominator of the sales factor consisted of the entire proceeds from the particular Appellant's home games, including the visitors' shares, plus the shares received by the Appellant from games played in California and elsewhere as a visiting club. The numerator of the sales factor consisted of the receipts from games played in California as a visitor.

Respondent recomputed the denominator of the sales factor by eliminating the visiting team's portion of gate receipts at the home games of each Appellant.

The results of the two approaches are illustrated by the following example. Assume that the gate receipts from all games played at Club A's home stadium outside of California are $100,000, $40,000 of which is received by the visiting clubs. Assume also that Club A receives $60,000 as its share from all games played by it as a visitor, $20,000 of which is from games in California. Under Appellants'[1] method the sales factor would be:

$$\frac{\$\ 20{,}000\ \text{(receipts from California games)}}{160{,}000\ \text{(receipts from all games)}}$$

Under Respondent's method the sales factor would appear thus:

$$\frac{\$\ 20{,}000\ \text{(receipts from California games)}}{120{,}000\ \text{(receipts from all games)}}$$

Applying the two fractions to net income, and ignoring the effect of the payroll factor for the purpose of this example, it may be seen that Appellants' method would attribute 1/8 of its net income to California while Respondent's method would increase the California portion to 1/6.

The sole issue to be determined is the properiety of Respondent's recomputation of the denominator of the sales factor.

Appellants argue that in many instances clubs outside of California must give the visiting club the minimum guarantee rather than a percentage because of poor gate receipts. A hypothetical example is posed by Appellants in which the amount paid to visitors exceeds the gate receipts and the club quartered at a stadium outside of California suffers a loss on its home games, while deriving a profit from the games it plays as a visitor elsewhere. Thus, Appellants' argument continues, the exclusion of the visitors' shares from the denominator of the sales factor would result in attributing excessive income to California.

In our opinion, however, when a non-California club finds it necessary to pay the visiting club the minimum guarantee because of poor gate receipts and, consequently, it retains a greater amount of receipts from California games than it does from home games, it may fairly be said that it has derived more income from California sources. Respondent's method correctly reflects this circumstance.

The gist of Respondent's approach is the realistic appraisal that the share allotted to a team from each game, whether played at home or as a visitor, represents that team's receipts.

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Arguments by Appellants to the effect that they are not engaged in true joint ventures with the clubs they play against and that the technical definition of gross receipts from their home games includes the visitors' shares are unconvincing and do not conclude the issue of whether Respondent's formula is proper.

Respondent has flexibility and broad discretion in specifying and defining the factors that are to be used in allocation formulae with respect to particular businesses. (El Dorado Oil Works v. McColgan, 34 Cal. 2d 731, appeal dismissed, 340 U.S. 801; Pacific Fruit Express Co. v. McColgan, 67 Cal. App. 2d 93.) The exercise of its discretion may not be upset by showing that another formula which it might have adopted produces different results. The formula applied by Respondent is fair and logical. Therefore its action must be affirmed.

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 Sections 25667 and 26077 of the Revenue and Taxation Code that the action of the Franchise Tax Board in denying the protests of New York Football Giants, Inc., et al., against proposed assessments of additional tax and in denying the claims of those Appellants for refund of tax in the amounts and for the years specified in the Opinion on file herein, be and the same is hereby sustained.

Done at Sacramento, California this 27th day of August, 1962 by the State Board of Equalization.

Geo. R. Reilly, Chairman

Richard Nevins, Member

John W. Lynch, Member

Alan Cranston, Member

__________, Member

ATTEST: Dixwell L. Pierce, Secretary