BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
CENTURY METALCRAFT CORPORATION)

In the Matter of the Appeal of)
)
CENTURY METALCRAFT MANUFACTURING CORPORATION)

Appearances:

For Appellants: Harold W. Nash, their Attorney.

For Respondent: James J. Arditto, Franchise Tax Counsel.

O P I N I O N

These appeals are made pursuant to Section 25 of the Bank and Corporation Franchise Tax Act (Chapter 13, Statutes of 1929, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of Century Metalcraft Corporation to his proposed assessments of additional taxes in the amounts of $1,355.67 and $1,401.03 for the taxable years ended March 31, 1938, and March 31, 1939, respectively, and in overruling the protests of Century Metalcraft Manufacturing Corporation to his proposed assessments of additional taxes in the amounts of $1,308.08 and $1,386.86 for the same taxable years.

Century Metalcraft Corporation (hereinafter referred to as Century) was engaged in the business of selling aluminum ware, a large part of its transactions being conditional sales. It obtained control, and later sole ownership of Acceptance Company of America (hereinafter referred to as Acceptance) to facilitate the financing of its conditional sales contracts, those contracts being sold to Acceptance without recourse. The Century Metalcraft Manufacturing Corporation (hereinafter referred to as Manufacturing), a wholly-ownt subsidiary of Century, was organized by it to manufacture aluminum ware. In the years ended March 31, 1937, and March 31, 1938, Century purchased from Manufacturing 4-1/3% and 40%, respectively, of the aluminum ware sold by Century.

Basing his action upon Sections 10 and 14 of the Act, the Commissioner obtained the combined net income of the three corporations and, after determining the portion of that income derived from California sources, allocated such portion between Century and Manufacturing. These allocations were made according to a three-factor formula, the factors of property, payroll and sales being given equal weight.

Appellants object to the inclusion of the income of Acceptance

in the computation of the combined net income to which the allocation formula was applied on the grounds that Acceptance was doing business solely within the State of Illinois, that it was separately managed, that the fees paid to it were fair in amount and that Acceptance had no dealings with Manufacturing. They contend that the effect of such inclusion is to tax to them a portion of the income of Acceptance.

In the Appeal of P. Lorillard Company (March 9, 1944) we held that the second paragraph of Section 14, as amended in 1935, and the third paragraph of that Section, as amended in 1937, rather than the first paragraph under either amendment, authorized the Commissioner, in a proper case, to obtain the combined net income of a company doing business in California and its parent company not doing business in the State, and then to allocate, under Section 10 of the Act, a portion of that income to California. In that matter the Commissioner did not in any way controvert or even question the allegations of the Appellant that all merchandise sold by the parent to it was sold at the same prices as were available to other purchasers, less additional discounts, that those prices were fair, and that no arrangement existed between any of the corporations which would improperly reflect the business done or the net income earned from the business done in this State. We found, accordingly, that there was no indication of a determination by the Commissioner of the existence of any arrangement improperly reflecting the business done or the net income from business done in this State, as required by the pertinent portions of Section 14, and that the action of the Commissioner was not authorized by the Section.

In the present case, however, the Commissioner has alleged that the three corporations were operated as parts of a single business, that, in discounting the contracts of Century, Acceptance took an arbitrary and excessive discount which had no relation to the value of the services rendered by it to Century, and that Acceptance, having no offices or employees in California, made some use of Century's offices and employees in this State in effecting collections from the customers of Century. It appears, accordingly, that the Commissioner acted upon the basis of a determination, which is supported by some evidence, that an arrangement existed between the three corporations which tended improperly to reflect the business done or the net income from business done by Appellants in this State.

The Commissioner was, in our opinion, justified in regarding the operations of the three corporations as a unitary business. The unitary nature of an ordinary manufacturing and selling business is well established. Bass, Ratcliff & Gretton v. State Tax Commissioner, 266 U. S. 231, Hans Rees' Sons, Inc. v. North Carolina, 283 U. S. 123, Palmolive Co. v. Conway, % F. (2d) 83, Certiorari denied 287 U. S. 601. Over half of Century's total sales were made on credit and it was of course necessary to finance these sales. The financing might have been done directly by Century, but it elected to avail itself of an affiliated corporation, Acceptance, for this purpose. Century's contracts were

apparently discounted with Acceptance as a routine matter. Acceptance did not have offices or employees in California and availed itself to some extent of the local offices and employees of Century The circumstances, accordingly, warranted the Commissioner's finding that the business of the three corporations was a unitary one.

There remains for consideration only the question of the correctness of the end result of the action of the Commissioner in combining the income of the three corporations and allocating parts of such income to the operations in this State of Century and Manufacturing, under Sections 14 and 10, of the Act, respectively. The Appellants contend that the Commissioner's action results in taxing to them a portion of the income of acceptance and income not attributable to their operations in this State. They have not attempted however, to establish through evidence or otherwise that the allocation formula employed by the Commissioner did not allow to Acceptance its fair share of the total net income of the three corporations or that it attributed to the Appellants more than their respective fair shares of that income, that the use of separate accounting would more accurately apportion to California the net income derived by them from or attributable to sources within this State than would be the method used by the Commissioner, or that the Commissioner's method allocated to California income not properly attributable to their operations within this State. Since one "who attacks a formula of apportionmentcarries a distinct burden of showing by 'clear and cogent' that it results in extra territorial values being taxed" (Butler Brothers v. McColgan, 315 U. S. 501, 507) and the Appellants have not satisfied this burden, the action of the Commissioner in overruling their protests to his proposed assessments of additional tax must be upheld.

O R D E R

Pursuant to the views expressed in the opinion of the Board on files in these proceedings and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the action of Chas. J. McColgan, Franchise Tax Commissioner, in overruling the protest of Century Metalcraft Corporation to proposed assessments of additional taxes in the amounts of $1,355.67 and $1,401.03 for the taxable years ended March 31, 1938, and March 31, 1939, respectively, and in overruling the protest of Century Metalcraft Manufacturing Corporation to porposed assessments of additional taxes in the amounts of $1,308.08 and $1,386.86 for the taxable years ended March 31, 1938, and March 31, 1939, respectively, pursuant to Chapter 13, Statutes of 1929, as amended, be and the same is hereby sustained.

Done at Sacramento, California, this 30th day of March, 1944, by the State Board of Equalization.

R. E. Collins, Chairman
Wm. G. Bonelli; Member
Geo. R. Reilly, Member
J. H. Quinn, Member

ATTEST: Dixwell L. Pierce, Secretary