BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
SINGER SEWING MACHINE COMPANY)

Appearances:

For Appellant: Henry E. Brown, Assistant Treasurer.

For Respondent: W. M. Walsh, Assistant Franchise Tax Commissioner; Hebard P. Smith, Assistant Tax Counsel.

O P I N I O N

This appeal is 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 Singer Sewing Machine Company to a proposed assessment of additional tax in the amount of $2,268.50 for the taxable year ended December 31, 1938.

The Appellant was engaged in the business of selling merchandise through its stores in California dnd other states. Its books were maintained on a separate accounting basis. Merchandise was invoiced to each of its stores at cost by its parent corporation, The Singer Manufacturing Company. Its franchise tax, return of income for the year 1937 was prepared on the basis of its separate accounting system, the return showing the gross income of its California stores and, as deductions therefrom, the cost of goods sold and other direct selling expenses of those sotres and an apportioned amount of certain expenses incurred at the executive offices in New York.

The Commissioner did not accept Appellant's method of separat accounting as correctly determining its net income from California business and proposed an additional assessment of tax based on an allocation to this State, through the use of the sales, property and payroll formula, of a portion of the combined net income of Appellent and the parent corporation. The income so allocated to California amounted to $90,778.44 for the year.

The Appellant does not contend that it is entitled to compute its tax liability on a separate accounting basis or that its taxable income cannot be determined through the application of an allocation formula to its entire net income combined with that of its parent. It does contend, however, that the formula applied by the Commissioner does not assign to California the portion of

its net income reasonably attributable to business done within the State in view of the fact that the formula does not reflect the abnormally high taxes to which it asserts it was subjected in California. In support of its position that its tax burden in this State was considerably greater than its average United States tax burden, it sets forth the following table:

	Taxes (Not including Rental Real Estate or Income Taxes)	Sales	%
Total for all States	$1,096,220.42	$39,545,624.76	2.7720
Total for California	71,481.23	1,851,113.12	3.8615

Thus, it is asserted, that "in the entire United States, on an average, taxes devoured only 2.7720 cents from each dollar of sales revenue" while in California "taxes devoured 3.8615 cents from each dollar of sales revenue." Appellant then points out that its costs and expenses in California were 96.51% of its gross receipts from California sales whereas for the entire United States, on an average, costs and expenses were only 92.33% of the gross receipts from sales (the sales, cost and expense figure are of course based on its separate accounting system), and that the sales, tangible property and pay roll allocation factors did not give weight to the abnormal California tax burden. As further evidence of the alleged above-average California tax burden, Appellant compares its actual California taxes of $71,481.23 with the amount of $35,798.39 allocated to California by the application of the Commissioner's allocating ratio of 3.26562% to the tax figure of $1,096,220.42.

Appellant argues that since the Commissioner segregated certain California real property taxes and deducted them directly from the net income allocated to California, he should have segregated other California taxes and deducted them directly from the allocated net income. It submits that the tax burden cannot be reflected by adjusting the allocation fractions and that the only reasonable way allowance can be made for the allegedly heavy California taxes is to segregate all taxes and then deduct California taxes directly from income allocated to California, its taxable income then being calculated as follows:

Consolidated Net Income of Singer Sewing Machine Company and The Singer Manufacturing Company, subject to allocation			$4,131,756.32
Allocated 3.26562% to California			134,927.46
Less: Loss on Rental Properties in California	$8,359.62		
Taxes paid in California not including rental real estate and social securities taxes of $8,266.13 or franchise tax of $1,201.85		71,481.23	79,831.85
Revised net Income allocated to California			$55,095.61

The Appellant has not, however, in our opinion set the burden of proof resting upon it under the decision of the United States Supreme Court in Butler Brothers v. McColgan, 315 U. S. 501 Since it does not contend that it is entitled to compute its tax liability on a separate accounting basis or that its taxable income cannot be determined through the application of an allocation formula to its entire net income combined with that of its parent, it is only necessary for us to consider the contention that the Commissioner's method of allocation does not reflect its California net income in view of its California tax burden.

The only tax figures submitted to us by Appellant are its total taxes for California and its total taxes for all states. It has also set forth the relationship of its California taxes to California sales and its total taxes to total sales. We have, however, been furnished no other information concerning the California taxes with the exception of a reference in the course of Appellant's argument that it paid personal property taxes, sales taxes, license taxes, and social security taxes in this State. The amounts of these taxes during the year in question are not given.

Since Appellant's business in this State involved for the most part the retail sale of tangible personal property, retail sales taxes undoubtedly constituted a considerable if not the major portion of the taxes paid. Inasmuch as retailers customarily obtain reimbursement of that tax from their purchasers, it is difficult to see how the tax could constitute to any appreciable extent a real burden on Appellant. So far as property taxes are concerned, Appellant has not attempted to show that California tax rates are higher than those of other states. If the burden of such taxes be higher here than the average burden for all states in terms of sales, this may be attributable simply to the fact that for reasons of its own it possessed larger amounts of personal property in California than it did, on the average, in other states as compared with its sales here and throughout the country.

Appellant's contention that since the Commissioner segregntec California real property taxes and deducted them directly from net income allocated to California, he should have segregated other California taxes and deducted them directly from the allocated net income is without merit. The taxes so segregated and deducted were imposed on property not used in the conduct of Appellant's unitary business within and without the State. They, together with the income from such property, were, accordingly, properly segregated by the Commissioner, but his action with respect thereto furnishes no precedent or basis for similar treatment of taxes, on property used in the course of the unitary business.

The foregoing considerations establish, in our opinion, that the Appellant has not shown, as required by the Butler Brothers case, by clear and cogent evidence that the apportionment formula applied by the Commissioner resulted in the taxation by this State of extraterritorial values. The action of the Commissioner on Appellant's protest to the proposed assessment of additional tax must, therefore, be sustained.

Appeal of Singer Sewing Machine Company

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 that the action of Chas. J. McColgan, Franchise Tax Commissioner, in overruling the protest of Singer Sewing Machine Company to a proposed assessment of additional tax in the amount of $2,268.50 for the taxable year ended December 31, 1938, pursuant to Chapter 13, Statutes of 1929, as amended, be and the same is hereby sustained,

Done at Sacramento, California, this 24th day of August, 1944, by the State Board of Equalization.

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

ATTEST: Dixwell L. Pierce, Secretary