



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal)
GIVAUDAN-DELAWANNA, INC.)

Appearances:

For Appellant: Shattuck, Bangs & Davis, Attorneys at Law
For Respondent: W. M. Walsh, Assistant Franchise Tax Commissioner

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 Givaudan-Delawanna, Inc., to a proposed assessment of additional tax in the amount of \$8.12 for the taxable year ended December 31, 1939.

The Appellant is a dealer in aromatic chemicals which it purchases in part from affiliated companies and in part from independent firms. It is stated in a memorandum filed with and in support of its appeal that the purchases are made from its affiliates on an 18 per cent discount basis, whereas the usual trade discount is only 10 per cent. It is further stated therein that Appellant is operated entirely as an individual and separate unit, and that it maintains separate books of records and account, and pays its own rent, salaries, wages, taxes and other normal business expenses. Its return of income for the year 1938 was prepared and filed on the basis of its separate accounting system.

The Commissioner concluded that it was necessary to disregard the separate corporate entities of Appellant and its affiliates in order to determine Appellant's net income from sources in this State. Acting in reliance upon Section 14 of the Act he obtained, accordingly, the combined net income of the affiliated corporations and then allocated to California, under Section 10, a portion of that income. He points out that it does not appear in the record how the 18 per cent commission or discount was determined, that any such determination is apt to be arbitrary and to represent merely the opinions of the officers controlling the parent corporation, and that the commission theory is falacious in that it is based on conjecture as to the proper percentage of commission to be allowed and involves the assumption that all profit in excess of the commission is profit to the manufacturing company.

Section 14 clearly authorizes the Commissioner to obtain,

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in certain cases, the combined net income of an affiliated group and to allocate to a member of the group doing business in this State a portion of that net income. The Appellant did not reply to the Commissioner's memorandum and informed us that it did not desire an oral hearing. Thus, no evidence has been offered in support of Appellant's position that its separate method of accounting accurately reflected its net income from sources in this State. By way of illustration, Appellant cited in its memorandum two transactions in which it assertedly acquired products from an affiliate at a lower price than they were quoted on the open market. These transactions occurred, however, in 1941 rather than in 1938, the year here in question, and in any event, by referring to two such isolated transactions Appellant could not be regarded as meeting the burden of proof resting upon it to establish that the action of the Commissioner was erroneous. His action in proposing the additional assessment of tax and in overruling the Appellant's protest thereto must, therefore, be sustained.

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 Givaudan-Delawanna, Inc., to a proposed assessment of additional tax in the amount of **\$8.12** for the taxable year ended December **31**, 1939, pursuant to Chapter 13, Statutes of 1929, as amended, be and the same is hereby sustained.

Done at Sacramento, California, this 9th day of May, 1945,
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