BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of

GOODYEAR TIRE AND RUBBER
COMPANY OF CALIFORNIA

Appearances:

For Appellant: F. T. Quirk

For Respondent: W.M. Walsh. Assistant Franchise Tax Commissioner; James J. Arditto, Franchise Tax Counsel

OPINION

This appeal is made pursuant to Section 27 of the Bank and Corporation Franchise Tax Act (Chapter 13, Statutes of 1929, as amended) from the action of the Franchise Tax Commissioner in denying the claim of Goodyear Tire and Rubber Company of California for a refund of tax in the amount of $2,768.85 for the taxable year ended December 31, 1938.

Appellant is a subsidiary of the Goodyear Tire and Rubber Company of Ohio and was incorporated under the laws of this State on December 24, 1937. It purchased its manufacturing plant from another California subsidiary of the Ohio company prior to the dissolution of that subsidiary on December 31, 1937 and commenced doing business on January 1, 1938, No income was received by Appellant prior to January-1, 1938, and its franchise tax return for the taxable year ended December 31, 1938, was based upon the income received by the dissolved subsidiary during the income year ended December 31, 1937. Upon audit of Appellant's return, however, the Commissioner requested that Appellant furnish a consolidated statement of the combined net income of Appellant's predecessor, the Ohio company and several other affiliates for the income year in question. Upon receiving this information the Commissioner redetermined the measure of Appellant's liability by consolidating only those accounts which, in hjs opinion, reflected the unitary operations of the affiliated group, and by then adding the full amount of the income received from intangibles having a California situs to the portion of combined unitary income deemed allocable to California. Thus, inasmuch as Appellant's predecessor had received an inter-company dividend from its parent, the Ohio company, in the amount of $69,221.25 during 1937, the Commissioner increased the measure of Appellant's tax liability by adding the amount of the dividend to the portion of the consolidated income otherwise allocable to California. The tax sought to be recovered herein is directly attributable to the inclusion of the inter-company dividend in the measure of Appellant's tax.

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Appellant's primary contention is that inter-company dividends, like other inter-company charges and payments, must be eliminated when consolidated statements are required or furnished under Section 14. While perhaps it did not, at any time, concede the Commissioner's authority to consolidate under that Section, it appears that it was originally agreeable to a consolidation of its accounts with those of other members of the group as a means of avoiding the confusion resulting from a series of transactions and stock exchanges whereby certain corporations were dissolved, merged or formed and the parent organization was refinanced. The Appellant apparently believed, however, that the inter-company dividends would be eliminated by reason of the consolidation. Whether the Commissioner agreed to consolidation in this manner as alleged by Appellant but denied by the Commissioner, is immaterial for the Commissioner lacked authority by agreement or otherwise to change the application of the Act.

Although only the inter-company dividend question was raised in its appeal, Appellant alleged in its reply to the Commissioner and in A supplemental memorandum, that it was not a successor to the dissolved California corporation from which Appellant's manufacturing plant was acquired (although its return indicated the contrary); and that it and the other members of the affiliated group whose accounts were consolidated were not conducting a unitary business. It then stated that the Commissioner was not authorized to consolidate its accounts with those of the affiliates not doing business in this State. Appellant has submitted no testimony or other evidence in support. of its allegations of fact respecting the nature of the corporate changes resulting in the dissolution of the Goodyear Tire and Rubber Company of California and its own formation, or the non-unitary character of the business conducted by it and the other members of the affiliated group. Furthermore, it has not cited a single legal authority in support of its position in these matters Since a presumption of correctness attaches to the Commissioner's action and the Appellant has the burden of proving his determination of tax to be incorrect (See Welch v. Helvering, 290 U.S. 111, 115, Lucas v. Structural Steel Co,, 281 U.S. 264, 271), we must conclude that the Appellant has not established a lack of authority on the part of the Commissioner to determine its income from business done in this State through a consolidation of its accounts with those of the other members of the affiliated group.

The principal matters at issue are thus narrowed down to the question whether the Commissioner was entitled to add the amount of the dividends received from the Ohio corporation to the portion of combined unitary net income allocable to California.

Appellant's contention that inter-company dividends must be eliminated upon consolidation in the same manner as other inter-company charges and payments is correct with respect to a consolidation as that term is ordinarily understood in the accounting sense. (CF. Gould Coupler Co., 5 B.T.A. 499, 516; New Orleans, Texas & Mexico Railway Co., 6 B.T.A. 435, 441; Fideltiy National Bank & Trust Co., 14 B.T.A. 905, 907.) The propriety of this contention does not, however, in our opinion, establish the Appellant's right to recover the amount of tax in question inasmuch as we are not convinced that the reference: to "combined net income" and "consolidated report" in Section 14 as in effect in 1937, necessarily require a consolidation in the full or accounting sense of that term. The section confers authority upon the Commissioner to obtain the combined net income

of a corporation doing business in this State and other affiliated corporations or such other facts as he deems necessary, and to adjust the tax in such manner as he shall determine to be equitable. In applying the Section, it is the practice of the Commissioner to limit the combination or consolidation of account to those reflecting the conduct of unitary operations by the members of the group, non-unitary operations of any member being excluded from consideration. The effect, accordingly, of so applying the Section and then applying Section 10 of the Act, as in the present case, to determine the portionof the combined net income'allocable to California is to assign to this State its allocable portion of the unitary netincome of the group.

A comparison of the language of Section 14 with that of Section 13½ as in effect in 1937, fully justifies, we believe, the view that the authority of the Commissioner under Section 14 is not limited to a mere consolidation of accounts and determination of combined net income. Section 13½ provides for consolidated returns in certain cases and further provides that the tax should be computed as a unit upon the consolidated net income of the group, with certain exceptionsnot here material. The language of Section 14, however, is much more far reaching.

In view of his broad grant of authority to adjust the tax in such manner as he shall determine to be equitable, the Commissioner's action is not, in our opinion, to be set aside merely upon the basis of the accounting principle that intercompany dividends ordinarily are eliminated upon a consolidation.. The Commissioner is seeking to determine the taxpayer's net income from business done in this State. The burden is upon the taxpayer to establish that the Commissioner's action has resulted in the taxation of income not reasonably attributable to its operations in this State.

Had the Commissioner not obtained the combined net income of Appellant and the other members of the affiliated group, the dividends, to the extent not deductible under Section 8(h), of the Act would clearly have been taxable to Appellant, a domestic corporation with its commercial domicile in this State. Appellant has offered no evidence tending to show to what extent, if any, the earnings or profits from which those dividends were declared were in fact in any way included in the measure of the California franchise tax imposed upon it or the Ohio corporation. For example, the Ohio corporation derived certain non-unitary income from intangibles, but we are not informed to what extent, if any, the dividends were attributable to this income or to the unitary income of the affiliated group. The taxpayer is not entitled to prevail, in our opinion, in the absence of a showing by it of facts establishing that the action of the Commissioner in fact resulted in the taxation of dividends previously included in the measure of the tax or of income not reasonably attributable to operations in this State.

The Appellant also contends that the entire deficiency assessment proposed by the Commissioner was barred by the statute -of limitations inasmuch as Section 25 of the Act, as in

effect at the time the tax accrued, required that notice of an additional tax be mailed within three years after the return was filed. Without passing on the question whether this objection may be considered in this proceeding to obtain a refund of tax, it is sufficient to point out that for the reasons set forth in our opinion in the Appeal of C. L. Duncan (March 9 1944) the amendatory provisions of Chapter 1050, Statutes oh. 1939, were applicable and that the notice was mailed within the four-year period provided by the Section as so amended.

It should be noted, with reference to Appellant's attempt to incorporate a claim for refund of the entire tax paid for the taxable year ended December 31, 1938 in this appeal, that this Board's jurisdiction under Section 27 of the Bank and Corporation Franchise Tax Act extends only to the review of the Commissioner's action on claims for refund and not to the entertainment of such claims in the first instance.

ORDER

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 denying the claim for refund of Goodyear Tire and Rubber Company of California in the amount of $2,768.85 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 18th day of September, 1946, by the State Board of Equalization.

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

ATTEST: Dixwell L. Pierce, Secretary