



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
UNITED STATES RUBBER COMPANY)
STOCKHOLDER UPON DISSOLUTION OF)
SAMSON TIRE & RUBBER CORPORATION)

Appearances:

For Appellant: E. S. Williams, Attorney at Law
For Respondent: W. M. Walsh, Assistant Franchise Tax
Commissioner; J. 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 United States Rubber Company - Stockholder upon dissolution of Samson Tire and Rubber Corporation for a refund of tax in the amount of \$9,079.26 for the taxable year ended December 31, 1939.

Appellant was the principal stockholder of Samson Tire and Rubber Corporation (hereinafter referred to as Samson), a Delaware corporation, which had been engaged in business activities in this State. On June 30, 1939, Samson ceased all business in California and elsewhere, and, pursuant to an agreed plan of liquidation, transferred to Appellant all its tangible and intangible assets other than cash. Appellant, itself a large creditor, paid or assumed all the liabilities of Samson, and advanced sufficient additional funds to compensate other shareholders of Samson for their proportionate interests upon liquidation. On July 6, 1939, Samson was legally dissolved under the laws of Delaware. Appellant, which had qualified previously to do business in California on January 3, 1939, used the assets obtained through the liquidation in the conduct of the same business operations formerly carried on by Samson,

A franchise tax return was filed for Samson for the taxable year 1939 measured by its income for 1938, but only one-half of the tax liability so disclosed was paid. It was argued that Samson was subject to the Bank and Corporation Franchise Tax Act only for the period from January 1, to June 30, 1939, reliance being placed upon the abatement provisions of Section 13(k) of the Act. Payment of the full amount of the tax for the year 1939 was demanded by the Commissioner upon the theory that the dissolution of Samson was pursuant to a reorganization within the meaning of Section 13(j) of the Act. Appellant then paid under

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protest this asserted balance of the tax and filed a claim for the refund thereof. Upon the denial of the refund claim, this appeal was made.

Section 13(k) of the Act provides for a pro-rata abatement or refund of tax when a corporation dissolves or withdraws from this State during a taxable year. -The Section contains the limitation, however, that "... the taxes levied under this Act shall not be subject to abatement or refund because of the cessation of business or corporate existence of any bank or corporation pursuant to a reorganization, consolidation, or merger."

Section 13(j), as amended by Chapter 1050, Statutes 1939, defined a reorganization to include a distribution in liquidation by a corporation of all or a substantial part of its business or property to a bank or corporation stockholder. It is clear from the record that Appellant, a corporate stockholder, received a substantial portion of the business and property of Samson as a distribution in liquidation and, accordingly, that the transaction fell precisely within this definition of reorganization. The Appellant contends, however, that this amendment, which became effective July 25, 1939, cannot be applied with respect to Samson which did no business in this State after June 30, 1939. To apply it, Appellant argues, would be to give the transaction of June 30, 1939, a different character and effect than that which it had under the law in force when that transaction was consummated. This position overlooks the point that no change of law is involved inasmuch as the 1939 amendment adding the distribution in liquidation clause to the Section 13(j) definition of "reorganization" has been held only to clarify rather than to expand the prior law. San Joaquin Ginning Co. v. McColgan 20 Cal. 2d 254. It inescapably follows, then, that there is not presented to us for consideration any question of the retroactive application of the amendment.

Appellant insists that despite this statutory language, the dissolution and cessation of business activities by a foreign corporation in this State imposes a constitutional limitation upon the assessment of franchise tax for any period thereafter. The case of Bank of Alameda County v. McColgan, 69 Cal. App. 2d 464, is cited, among others, as authority for this position that the tax is not due for any period after the corporation is no longer in existence and, of course, does not exercise the privilege of doing business in this State. While we have agreed with the Appellant that the rule of this case is applicable to a foreign corporation which dissolves and ceases to do business in California (Appeal of Waland Lumber Company, September 18, 1946), it should be observed that the Court noted in its opinion therein that no evidence had been presented to indicate that the practical discontinuance of corporate existence was due to any plan of reorganization, consolidation, or merger. As respects the application of the principle urged by Appellant, there is, in our opinion, considerable difference between a situation wherein the business of a foreign corporation in this State entirely ceases upon the dissolution of the corporation and that wherein

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there is for all practical purposes, only a change in the form of a corporate structure without any substantial change in the business operations and interests involved. See Pacific Mutual Life Insurance Co. v. Martin, 369 Ill. 158, 15 N.E. 2d 847. The cases cited by Appellant, relating merely to the discontinuance of business in this State, cannot, we believe, be regarded as controlling where a reorganization has occurred.

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 United States Rubber Company - Stockholder upon Dissolution of Samson Tire and Rubber Corporation in the amount of \$9,079.26 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 1st day of November, 1946, by the State Board of Equalization.

Wm. G. Bonelli, Member
J. H. Quinn, Member
Thomas H. Kuchel, Member
George R. Reilly, Member

ATTEST: Dixwell L. Pierce, Secretary