BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
AMERICAN WRITING PAPER CORPORATION)

Appearances:

For Appellant: Charles L. Kirkpatrick, Secretary

For Respondent: Burl D. Lack, Chief Counsel; Crawford H. Thomas, Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to Section 25667 of the Revenue and Taxation Code (formerly Section 19 of the Corporation Income Tax Act) from the action of the Franchise Tax Commissioner (now succeeded by the Franchise Tax Board) on the protests of American Writing Paper Corporation to proposed assessments of additional tax in the amounts and for the years as follows:

1938	$ 4.02	1942	$205.89
1939	139.26	1943	275.15
1940	90.65	1945	162.73
1941	416.61		

Appellant is a Delaware corporation engaged in the business of manufacturing and selling various papers for correspondence, business and other uses. It manufactures the papers in several mills located in Holyoke, Massachusetts, where it also has its principal place of business. It sells its products in California and throughout the United States. Its California sales, however, do not include any of the output of two of the mills. Separate accounting records are maintained for each of the mills and a computation is made of the in-

come of each on a separate accounting basis.

Upon being advised in 1948 that it was subject to the California corporation income tax, Appellant filed returns with the Commissioner for the years 1937 through 1947. In its return for each year it completed the schedule for the determination of the percentage of its income allocable to California through the application of the-property-payroll-sales formula. The percentages for the several years as disclosed by the returns varied from 1.01973% to 1.604423%. The Appellant did not use the percentages so determined, however, in allocating income to this State, but rather for each of the years here in question assigned 0.302624% of its allocable income to California. This percentage was ascertained as follows: The mills whose products were not sold in California were entirely eliminated from consideration; the ratio of California sales to total sales of each of the other mills in 1946 and 1947, expressed in percentage terms, was applied to the income of that mill to derive an amount of income attributable to California; the total California income so determined for the years 1946 and.1947 was then divided by the total income for those years of such other mills, the percentage thus arrived at being 0.302624; and this percentage was then applied to the total income for each of the years here in question to obtain the Appellant's California income for each of those years.

Appellant's plan of allocation seems to be predicated on the theory that it was conducting a unitary business within and without California apart from the two mills whose products were not sold here, and that the California income of that business might be determined through a combination of separate accounting and allocation on the basis of sales, the years 1946 and 1947 being used as a base period for the determination of the allocation percentage for the prior years. The Commissioner rejected this plan, however, and employed the allocation percentages resulting from the use of the property-payroll-sales formula, as set forth in Appellant's returns, for obtaining Appellant 's income for each of the years. Other adjustments made by the Commissioner have not been questioned by the taxpayer.

It is the position of the Appellant that its method of allocation fairly apportions to California income from sources in this State, Clearly, Appellant has failed to establish that it is not conducting a unitary business here and elsewhere. From all that appears, it

is conducting in the usual fashion a manufacturing and selling business and, in the absence of a showing of facts indicating the lack of the essential unities, the determination of the Commissioner that its business is a unitary one must be upheld. Butler Brothers v. McColgan, 315 U. S. 501; Edison California Stores, Inc. v. McColgan, 30 Cal. 2d 472; John Deere Plow Co. v. Franchise Tax Board, 38 A. C. 216, appeal dismissed by United States Supreme Court May 5, 1952. The fact, of itself, that the products of two of the mills were not sold in California would not require, under these authorities, that the operations of those mills be excluded in the determination of Appellant's California income.

That the operations of all the mills might be so interrelated as to constitute a unitary business is obvious. The California Supreme Court in its decision in Butler Brothers v. McColgan, 17 Cal. 2d 664, discussed and upon North American Cement Corp. v. Graves, 269 N. Y. 507, 199 N. E. 510, aff'd 299 U. S. 517, involving a situation substantially similar to that here presented. The corporation there questioning a New York tax operated its "plants separately and sold their products in separate districts, kept separate accounts for them, and sold very little of the output of the West Virginia and Maryland plants in New York." 17 Cal. 2d 664, 674. The business, nevertheless, was held to be unitary and formula allocation was upheld over the taxpayer's objection that its New York income was properly reflected by its separate accounting system.

The use by Appellant of the relationship of California to total sales in 1946 and 1947 in measuring the California portion of its income for prior years is questionable to say the least. It is unnecessary, however, to discuss in detail the method whereby Appellant obtained its California income for those years. The reasonableness of the application of the property-payroll-sales allocation formula to the income of a manufacturing or purchasing and selling business has been upheld in the Butler, Edison and Deere decisions. As Appellant has not shown by clear and cogent evidence, as required by those authorities, that the use of the formula resulted in the taxation of extraterritorial values, the action of the Commissioner must 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, pursuant to Section 2566'7 of the Revenue and Taxation Code that the action of the Franchise Tax Commissioner (now succeeded by the Franchise Tax Board) on the protests of American Writing Paper Corporation to proposed assessments of additional tax in the amounts and for the income years as follows:

1938	$ 4.02	1942	$205.89
1939	139.26	1943	275.15
1940	90.65	1945	162.73
1941	416.61		

be and the same is hereby sustained.

Done at Sacramento, California, this 22d day of July, 1952, by the State Board of Equalization.

J. L. Seawell, Chairman

_____, Member

George R. Reilly, Member

J. H. Quinn, Member

Thomas H. Kuchel, Member

ATTEST: Dixwell L. Pierce, Secretary