



BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals )  
of )  
W. J. BUSH & CO., INC. and )  
W. J. BUSH CITRUS PRODUCTS CO., INC. )

Appearances:

For Appellant: Herbert S. Ogden, Jr., Certified  
Public Accountant

For Respondent: Burl D. Lack, Chief Counsel;  
John S. Warren, Associate Tax  
Counsel

O P I N I O N

These appeals by W. J. Bush & Co., Inc., and W. J. Bush Citrus Products Co., Inc., are from the action of the Franchise Tax Board in denying their protests to proposed assessments of additional franchise tax against W. J. Bush & Co., Inc., in the amounts of \$551.17, \$421.18, \$270.71 and \$243.44 and against W. J. Bush Citrus Products Co., Inc., in the amounts of \$3,796.56, \$2,719.09, \$1,689.39 and \$2,044.15 for the income years 1946, 1947, 1948 and 1949, respectively,

Appellant W. J. Bush & Co., Inc., a New York corporation, is the United States subsidiary of W. J. Bush & Co., Ltd., a British corporation, It purchases, manufactures. and sells in this country essential oils, food concentrates, perfumes and similar products. Appellant W. J. Bush Citrus Products Co., Inc., is the wholly owned subsidiary of the United States corporation and is also incorporated under the laws of New York, The Citrus Products firm processes and sells citrus oils, juices, concentrates and related products, In this opinion we shall refer to W. J. Bush & Co., Inc., as the parent and W. J. Bush Citrus Products Co., Inc., as the subsidiary,

The subsidiary's manufacturing is done in a plant owned by the parent and located in National City, California, During the years involved here the subsidiary paid no rent for the use of this plant, The two corporations had a common address, chief executive officer and both used the worldwide trademark of the British affiliate, Tax returns were prepared for both at the New York offices. A catalogue of their products

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listed **those of** both and was used by both in their sales activities, The products of both parent and subsidiary were sold exclusively by the parent throughout the United States except in Washington, Oregon, Nevada, Arizona and California, where all sales were handled by the subsidiary. Some intercompany sales took place: those from the parent to the subsidiary were at cost plus **15%**, which was usually **con-**siderably below the market price for the items sold; those from the subsidiary to the parent were generally at less than market although no uniform pricing policy has been shown.

It is the position of the Franchise Tax Board that the two corporations are engaged in a single unitary enterprise, the income of which is subject to formula allocation for tax **purposes.**

A unitary business **may** be defined as one in which there is (1) unity of ownership, (2) unity of operation as evidenced by central purchasing, advertising, accounting and management divisions, and (3) **unity** of use in its centralized executive force and **general system** of operation, Butler Brothers v. McColgan, 17 Cal, 2d 664 (1941), 315 U. S. 501 (1942). Here there was unity of ownership. There was centralized advertising--in the catalogue used to publish and sell the products of both; centralized accounting--in the home office where monthly sales reports were sent by the subsidiary and where the tax returns of both were **prepared**; centralized management--the chief executive officer of each being the same. And finally, there was unity of use in the centralized executive force and general system of operation as shown by the parent financing the subsidiary, by the parent furnishing a rent free plant, and **by** the intercompany sales at prices below market,

A unitary business may also be defined as one in which the parts either contribute to or are dependent upon each other. Edison California Stores v. McColgan, 30 Cal. 2d 472 (1947). **Contribution and dependency** are clearly shown here **by the inter company sales** by the financing done by the parent, and by the furnishing of a rent free plant.

Appellants point to the lack of a centralized purchasing department as indicative of the separate operations of the two firms. While the courts have relied upon the existence of centralized purchasing when it was present, this is but one factor to be considered, Where so many other facts point to the presence of a unitary business, the absence of this factor is not enough, by itself, to change the result. We conclude, accordingly, that Appellants were engaged in a single unitary business, This conclusion brings us to the

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next contention of Appellants: namely, that the action of the Franchise Tax Board results in the taxation by California of income not reasonably attributable to the business done in this State.

Once it is determined that Appellants are engaged in a unitary business they must show that the formula used in allocating income to the state is intrinsically arbitrary or that it has produced an unreasonable result. Butler Brothers v. McColgan, supra, But it cannot be urged today that the three factor formula of payroll, property and sales here used is intrinsically arbitrary: the courts have too often held that it is not. Butler Brothers v. McColgan, supra; Edison California Stores v. McColgan, supra; and John Deere Plow Co. v. Franchise Tax Board, 38 Cal. 2d 214 (1951), To prevail in their contention, accordingly, it is incumbent upon Appellants to prove that use of the formula produced an unreasonable result,

The California Supreme Court said in the Butler case, supra, "To rebut the presumption that the formula produced a fair result, 'the burden is on the taxpayer to make oppression manifest by clear, cogent evidence.' (Norfolk & Western Ry. Co. v. North Carolina (1936), 297 U. S. 682, 688 156 Sup. Ct. 625, 80 L. Ed, 977].)." This burden is not met by reliance upon the accuracy and reasonableness of separate accounting. Edison California Stores v. McColgan, supra; John Deere Plow Co. v. Franchise Tax Board, supra. Since Appellants have not produced any evidence of unfairness other than separate accounting, we conclude that the results produced by the formula were reasonable.

Appellants contend finally that in the absence of an arrangement between them which would improperly reflect the income from California sources, the Franchise Tax Board is not authorized to combine income. The California Supreme Court, however, has held that under Section 10 of the Bank and Corporation Tax Act (now Section 25101 of the Revenue and Taxation Code) the formula method may be used to allocate income of a unitary system to this State whenever activities are partially within and partially without the State, whether the integral parts of the system are or are not separately incorporated. Edison California Stores v. McColgan, supra.

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,

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 25667 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protests of W. J. Bush & Co., Inc., and W. J. Bush Citrus Products Co., Inc., to proposed assessments of additional franchise tax in the amounts of \$551.17, \$421.18, \$270.71 and \$243.44 against W. J. Bush & Co., Inc., for the income years 1946, 1947, 1948 and 1949, respectively, and in the amounts of \$3,796.56, \$2,719.09, \$1,689.39 and \$2,044.15 against W. J. Bush Citrus Products Co., Inc., for the income years 1946, 1947, 1948 and 1949, respectively, be and the same is hereby sustained;

Done at Sacramento, California, this 12th day of June, 1957, by the State Board of Equalization.

Robert E. McDavid, Chairman

Paul R. Leake, Member

J. H. Quinn, Member

George R. Reilly, Member

Robert C. Kirkwood, Member

ATTEST: R. G. Hamlin, Acting Secretary