



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal')
)
)
TRANS WORLD AIRLINES, INC.)

Appearances:

For Appellant: Waters, Arditto & Waters and
 James J. Arditto, Attorneys
 at Law

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

O P I N I O N

This appeal is made pursuant to Section 25667 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the protest of Trans World Airlines, Inc.; to a proposed assessment of additional franchise tax in the amount of \$3,320.79 for the income year 1949.

The, sole issue for determination in this appeal is whether Appellant; in computing its net income subject to allocation by formula, properly deducted a loss sustained upon the sale of shares of stock in a foreign airline company, thereby reducing proportionately the measure of the California tax.

'Appellant is a Delaware corporation with its' principal place of business in Missouri. It is engaged in the air transportation business in many states', including California,, and -'foreign countries.. The stock in question represented approximately 37% of the issued shares of TACA Airways, S.A., and was acquired by Appellant between the years 1943 and 1945,' as part of. 'Appellant's program to develop a world wide airline system.

At or about the time of its initial purchase of the stock in 1943, Appellant gained "working control" of TACA through a contract with the individual then in control of the company. We have not been informed of the details of that contract. As respects the subsequent operation of TACA,

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we have been told only that the other party to the contract was retained as general manager, some of Appellant's personnel were transferred to TACA and Appellant sold TACA airline tickets. These tickets represented separate fares and Appellant did not sell single tickets to cover transportation over both its own and TACA's routes.:

In 1945 Appellant abandoned its plan for expansion and terminated the contract under which it held "working control" of TACA. It sold the TACA stock in 1949 at a loss of \$1,100,000. The Franchise Tax Board allocated the loss specifically to sources outside California on the ground that the stock did not have a taxable situs in California;

In reliance upon Holly Sugar Corporation v. Johnson, 18 Cal. 2d 218, Appellant contends that when a corporation "buys a substantial block of stock of a corporation engaged in the same commercial activity as that of [the] buyer ... with the sole purpose being to eventually absorb such corporation into its integrated activities and thereafter selling such stock at either a gain or loss, such gain or loss should be treated as part of the allocable income or loss of such taxpayer; "

Holly Sugar Corporation v. Johnson, supra, was before the court on a demurrer. Explicit in the decision, however, was the determination by the court that the statement of facts supported an inference that the stock in question acquired a situs in this State, which in turn "fixed the situs of the stock loss in California and established the propriety of the claimed deduction" from the measure of the California franchise tax. Appellant has neither alleged nor attempted to establish that the stock under consideration in this appeal had, at the time of its sale in 1949, a situs in this State. We are of the opinion, accordingly, that a gain or loss resulting from the sale was attributable to sources without the State; See Southern Pacific Company v. McColgan, 68 Cal. App. 2d 48; Pacific Western Oil Corporation v. Franchise Tax Board, 136 Cal. App. 2d 794.

ORDER

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 in denying the protest of Trans World Airlines, Inc., to a proposed assessment of additional franchise tax in the amount of \$3,320.79 for the income, year 1949 be and the same is hereby sustained.

Done at Sacramento, California, this 7th day of May, 1958, by the State Board of Equalization.

George R. Reilly, Chairman

Paul R. Leake, Member

J. H. Quinn, Member

Robert E. McDavid, Member

_____, Member

ATTEST.: Dixwell L. Pierce, Secretary