

(A)

BEFORE THE STATE BOARD OF EQUALIZATION  
 OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of )  
 BEATRICE FOODS COMPANY AND MEADOW )  
 GOLD DAIRIES OF CALIFORNIA, INC. )

Appearances:

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

OP - IMION

These appeals by Beatrice Foods Company and Meadow Gold Dairies of California Inc., are made pursuant to Section 25667 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying Appellants' protests against proposed assessments of additional franchise taxes as follows:

	<u>Income year ended</u>	<u>Amount</u>
Beatrice Foods Company	February 28, 1950	\$ 409.28
Beatrice Foods Company	February 28, 1951	2,608.72
Meadow Gold Dairies of California, Inc.	February 28, 1950	2,836.72
Meadow Gold Dairies of California, Inc.	February 28, 1951	4,628.51

Beatrice Foods Company (hereinafter referred to as Appellant) is a Delaware corporation with its headquarters and principal place of business in Illinois. During the years involved herein it owned all of the stock of twelve corporations, including that of Appellant, Meadow Gold Dairies of California, Inc. (hereinafter referred to as Meadow Gold). Beatrice Foods Company and its subsidiaries were engaged primarily in the processing and sale of dairy products, such as milk, ice cream and butter, although a few of the subsidiaries did not process or sell dairy products.

The modus operandi of the group was as follows. The various corporations had interlocking boards of directors and the officers of the subsidiaries customarily received part of their salaries directly from the parent. The top officials

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of Appellant operated out of the headquarters office in Chicago and maintained general overall supervision of each branch and subsidiary. Central **research facilities** were maintained at the Chicago headquarters office, Items such as milk and ice cream cartons were purchased centrally whenever economies could be effected thereby. Insurance and financing for all of the subsidiaries were arranged **at the** headquarters office. There was a common pension plan for the employees of the group. And, finally, most of the production of Appellant and its subsidiaries was marketed under the "**Meadow Gold**" trademark which was exploited by national and local advertising planned and **executed** by the Appellant's advertising department at the Chicago headquarters.)

Within the above framework, each plant was operated by a local manager who supervised the day to day operations of his plant, These managers purchased raw materials locally, processed them,, and sold them in the local market. They had authority to purchase any and all items locally if savings could be effected, When **they did** take centrally-purchased items such as **cartons from** Beatrice Foods Company, they were billed at cost and obtained the benefit of quantity discounts. Each plant was also billed for **an** aliquot portion of the advertising costs, costs of insurance, etc.

Appellants ~~were~~ the only corporations in the group that did business in **California**. Beatrice Foods Company operated a branch at Los Gatos where it had an ice cream manufacturing plant. Meadow Gold operated a plant at **Pasadena where** it processed milk, manufactured ice cream and also handled butter, eggs and **cottage** cheese, Both kept separate accounting records and prepared their tax returns upon a separate accounting basis, except that for the year ended in 1951, Beatrice Foods Company filed an amended return apportioning its own income within and without the State through the allocation formula of property, payroll and sales. The Franchise Tax Board determined that Beatrice Foods and all of its subsidiaries were parts of a unitary **business and** combined the income of all, It then determined the income attributable to California sources by means of the usual three-factor formula composed of property, payroll and sales.

The issue is the Franchise Tax Board's determination that Beatrice Foods Company and all of its subsidiaries are engaged in a single unitary business. As stated by ~~appellants~~ <sup>STANT</sup> in their opening brief, this will depend upon ~~whether~~ or not the operation of the portion of the business within the state is dependent upon or contributory to the operation of the business outside of the **state.**" This is the test set forth in Edison California Stores, Inc. v. McColgan, 30 Cal.

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2d 472, 481, where the court said: "If the operation of the portion of the business done within the state is dependent upon *or* contributes to the operation of the business without the state, the operations are unitary; otherwise, if there is no such dependency, the business within the state may be considered to be separate," (See also, Butler Brothers v. McColgan, 17 Cal. 2d 664, 668, affd 315 U.S. 501.) *end* If the unitary features adopted with respect to a commonly owned group of corporations are sufficient to reflect themselves in materially increased profits for the entire group, it necessarily follows, within the scope of the test announced by the court and the purpose of formula allocation, that the corporations are engaged in a unitary business.

Applying this test, we believe that the unitary nature of the business is here established. ✓ The overall managerial supervision and control and the interlocking boards of directors contribute to increased profits for the group, for as pointed out in Butler Brothers v. McColgan, supra, the enlarging of the base "permits better as well as more costly services of ... management to be available to each store, whereas if each were separately operated, services of such quality in all probability would be too expensive to be practicable." In like manner, contributions to combined profits are made by the use of a joint pension plan, a common trademark, common advertising, central insurance, central financing, central research and central purchasing of some of the raw materials used by many members of the group. The obvious purpose and inevitable effect of these unitary features, when added together, is to materially increase the profits of the group over the combined profits which would obtain if each member operated in an entirely independent manner.

Appellants emphasize the fact that there was no central purchasing of the basic raw material, milk, and allege that this takes their situation out of the rule announced in the above-cited cases. We do not agree. Although the courts have placed reliance on this fact when present, it alone is not determinative.

Appellants also point to the fact that two of its subsidiaries, Lackawanna Cold Storage Company and Lambrecht Foods, were not engaged primarily in handling dairy products and that Beatrice Foods Company itself manufactured and distributed the "La Choy" line of Chinese foods in addition to handling margarine, frozen foods and dairy products. In this connection, it has been alleged by the Franchise Tax Board and not denied by Appellants that elimination of the two subsidiaries would not decrease the tax on the Appellants. Aside from this, however, the fact that different products are handled does not in

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itself negate the existence of a unitary business.

✓ In the Butler Brothers case, supra, the court in discussing North American Cement Corp. v. Graves, 269 N.Y. 507; 278 N.Y. Supp. 920; 299 U.S. 517, stated, at p.674: "The significance of this decision on two points involved in the instant case is readily apparent: (1) It holds that the operations of four separate manufacturing plants, one of them making a different product from different materials than the others, are so interrelated as properly to be treated as unitary . . . ." (Emphasis added.) It is noted that ten percent of the products in the warehouses of the cold storage company were those of other corporations in the group, And Appellants themselves have stated that their central research includes "a continuous search for new products that will fit into the company's manufacturing and distribution system . . . ." Considering the presence of the other unitary factors previously discussed, i.e., common ownership, interlocking boards of directors, central insurance, central financing, central research, a joint pension plan and overall supervision and control, we are unable to conclude that any part of the business is so separate and distinct that the Franchise Tax Board was incorrect in determining that it was part of a single unitary business. ✓

Appellants allege that their separate accounting records reflected the peculiar conditions present in each locality and thus properly determined the "true operating income" from the State of California. ✓ They emphasize that price limits, imposed by the California Milk Control Board, according to separate accounting records, reduced the profits of Meadow Gold and led to a loss by it in one year, But once it has been determined that a business is unitary, the mere fact that separate accounting produces a different result, even showing a loss in the taxing state, is immaterial (John Deere Plow Co. v. Franchise Tax Board, 38 Cal, 2d 214; Edison California Stores, Inc. v. McColgan, supra), It is recognized in the John Deere case that "varying conditions in the different states . . . must be expected . . . and yet the mutual dependency of the interrelated activities in furtherance of the entire business sustains the apportionment process," ✓

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 Beatrice Foods Company and Meadow Gold Dairies of California, Inc., to proposed assessments of additional franchise tax in the amounts of \$409.28 and \$2,608.72 against Beatrice Foods Company for the income years ended February 28, 1950, and February 28, 1951, respectively, and in the amounts of \$2,836.72 and \$4,628.51 against Meadow Gold Dairies of California, Inc., for the income years ended February 28, 1950, and February 28, 1951, respectively, be and the same is hereby sustained.

Done at Los Angeles, California, this 19th day of November, 1958, by the State Board of Equalization.

Geo. R. Reilly, Chairman

J. H. Quinn, Member

Paul R. Leake, Member

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ATTEST: Dixwell L. Pierce Secretary