



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)
NEW YORK FOOTBALL GIANTS, INC., ET AL.)

Appearances:

For Appellants: Marshall E. Leahy, Attorney at Law

For Respondent: A. Ben Jacobson, Associate Tax Counsel

O P I N I O N

These appeals are made pursuant to Sections 25667 and 26077 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying protests against proposed assessments of additional tax and in denying claims for refund of tax in the amounts and for the years as follows:

| <u>Appellant</u> | <u>Taxable Year</u> | <u>Amount</u> |
|--|----------------------------|---------------|
| Proposed assessments of corporation income tax (Chapter 3) | | |
| New York Football Giants; Inc. | 1956 | \$ 25.86 |
| | 1957 | 64.03 |
| | 1958 | 35.59 |
| Cleveland Browns, Inc. | Ended June 30, 1954 | 59.10 |
| | Ended June 30, 1955 | 45.21 |
| | Ended June 30, 1956 | 91.94 |
| | Ended June 30, 1957 | 37.28 |
| | Ended June 30, 1958 | 82.65 |
| | Ended June 30, 1959 | 195.61 |
| Philadelphia Eagles, Inc. | 1950 | 34.03 |
| | 1953 | 6.86 |
| Proposed assessments of franchise tax (Chapter 2) | | |
| Pro-Football, Inc. | Ended July 31, 1951 | 91.06 |
| | Ended July 31, 1952 | 91.06 |
| | Ended July 31, 1953 | 55.20 |
| | Ended July 31, 1954 | 605.63 |
| | Ended July 31, 1957 | 146.80 |
| | Ended July 31, 1958 | 82.26 |
| | Ended July 31, 1959 | 142.43 |
| | Ended July 31, 1960 | 159.31 |

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| <u>Appellant</u> | | <u>Amount</u> |
|--|------|---------------|
| Claim for refund of corporation income tax (Chapter 3) | | |
| Pittsburg Steelers Sports, Inc. | 1955 | 25.23 |
| Claims for refund of franchise tax (Chapter 2) | | |
| Detroit Football Company | 1952 | 38.28 |
| | 1954 | 62.17 |
| | 1955 | 132.96 |
| | | 141.09 |
| | 1956 | 62.82 |
| | 1958 | 57.05 |
| | 1959 | 149,94174.30 |
| Baltimore Football, Inc. | 1955 | 22.72 |
| | 1956 | 95.64 |
| | 1957 | 78.20 |
| | 1958 | 89.45 |
| | 1959 | 249.46 |

Each Appellant is a corporation engaged in the operation of a professional football club as a member of the National Football League. The league is divided into two conferences, the Eastern Conference and the Western Conference. Appellants' teams play in various states, including California. The home stadium of each Appellant is outside of this State.

When a regularly scheduled game is played, the visiting club receives a minimum of \$30,000 or 40 percent of the gate receipts after deductions for admission taxes, 2 percent for operation of the league and 15 percent as an allowance for the expenses of the home club in staging the game. The balance is retained by the home club. In a preseason exhibition game, a game to play off a tie in a conference after a season's play and in a game between the champions of each conference, the game receipts are divided equally between the competing clubs after certain specified deductions are made.

Each Appellant determined its net income from sources within California by use of an allocation formula employing two factors, payroll and sales. The denominator of the sales factor consisted of the entire proceeds from the particular Appellant's home games, including the visitors' shares, plus the shares received by the Appellant from games played in California and elsewhere as a visiting club. The numerator of the sales factor consisted of the receipts from games played in California as a visitor.

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Respondent recomputed the denominator of the sales factor by eliminating the visiting team's portion of gate receipts at the home games of each Appellant.

The results of the two approaches are illustrated by the following example. Assume that the gate receipts from all games played at Club A's home stadium outside of California are \$100,000, \$40,000 of which is received by the visiting clubs. Assume also that Club A receives \$60,000 as its share from all games played by it as a visitor, \$20,000 of which is from games in California. Under Appellants' method the sales factor would be:

| | |
|----------------|----------------------------------|
| \$ 20,000 | (receipts from California games) |
| <u>160,000</u> | (receipts from all games) |

Under Respondent's method the sales factor would appear thus:

| | |
|----------------------|----------------------------------|
| \$ 20,000 | (receipts from California games) |
| <u>120,000</u> | (receipts from all games) |

Applying the two fractions to net income, and ignoring the effect of the payroll factor for the purpose of this example, it may be seen that Appellants' method would attribute 1/8 of its net income to California while Respondent's method would increase the California portion to 1/6.

The sole issue to be determined is the propriety of Respondent's recomputation of the denominator of the sales factor.

Appellants argue that in many instances clubs outside of California must give the visiting club the minimum guarantee rather than a percentage because of poor gate receipts. A hypothetical example is posed by Appellants in which the amount paid to visitors exceeds the gate receipts and the club quartered at a stadium outside of California suffers a loss on its home games, while deriving a profit from the games it plays as a visitor **elsewhere**. Thus, Appellants' argument continues, the exclusion of the visitors' shares from the denominator of the sales factor would result in attributing excessive income to California.

In our opinion, however, when a non-California club finds it necessary to pay the visiting club the minimum guarantee because of poor gate receipts and, consequently, it retains a greater amount of receipts from California games than it does from home games, it may fairly be said that it has derived more income from California sources. Respondent's method correctly reflects this **circumstance**.

The gist of Respondent's approach is the realistic appraisal that the share allotted to a team from each game, whether played at home or as a visitor, represents that **team's** receipts.

