

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
McCALL CORPORATION-)

Appearances:

For Appellant: Kenneth A. McGaw, Jr., and
Helen Buckley, Attorneys at Law

For Respondent: 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 from the action of the Franchise Tax Board on the protests of McCall Corporation against proposed assessments of additional franchise tax in the amounts of \$102.69 and \$763.60 for the income years 1954 and 1955, respectively.

Appellant is a Delaware corporation with its principal office in New York. During the years in question it was engaged in operations in several states. It conducted activities through four divisions, a publishing division, a pattern division, a photoengraving division and a commercial printing division. It operated a printing plant, not as part of any particular division, where all of its printing was done. In California, Appellant maintained a subscription office for magazines published by it and a sales office and stockroom for clothing patterns which it produced.

In its franchise tax returns for the years involved Appellant combined the income of all of its divisions except the commercial printing division and assigned a portion of the income to California by use of an allocation formula. The issue is whether the commercial printing division was a part of the unitary business, requiring the inclusion of the income from that division together with the rest of the income to be allocated.

The publishing division of Appellant published three nationally circulated magazines, McCall's, Redbook and Bluebook. The activities of this division included purchasing rights to literary works and illustrations, compiling and editing, selling and servicing contracts to advertise in the magazines, promoting sales of the magazines and distributing them to subscribers and dealers. Most of these activities were conducted at Appellant's New York office. Branch offices for soliciting advertising and

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subscriptions were maintained in cities throughout the United States and Canada.

The pattern division **engaged** in manufacturing and selling clothing patterns. The pattern designing was done at Appellant's office in New York. Pattern sales offices and stockrooms were located in various cities in the United States and Canada.

The photoengraving division manufactured and sold photoengraving plates. These were used in printing Appellant's magazines and other products of Appellant. They were also used in printing magazines for other publishers. The plant and administrative offices of this division were located in Connecticut,

The commercial **printing** division sold and serviced contracts to print magazines for publishers other than Appellant and contracts to perform other printing work for outside firms. A selling and administrative office for the division was located at Appellant's headquarters in New York and an operating office was located in Dayton, Ohio.

Separate accounting records were kept for the commercial printing division, **as** they were for each of the other divisions. The commercial printing division did no advertising. Its purchases of raw materials were small since its customers ordinarily furnished their own paper. A vice president of Appellant was in direct charge of both this division and the photoengraving division. The latter division supplied the commercial printing division with photoengraving plates,

All of the printing which Appellant did for itself and others was performed at a printing plant **owned** and operated by it in Layton, Ohio. The entire facility was operated as a whole, no particular portion of the plant or personnel being set apart to function for any one division. On the basis of costs, approximately 66 percent of the printing done at this plant was for the commercial printing **division**, 20 percent for the publishing division and **14** percent for the pattern division.

Citing Butler Bros. v. McColgan, 315 U. S. 501 [86 L. Ed. 991] and Edison California Stores, Inc. v. McColgan, 30 Cal. 2d 472 [183 P. 2d 16] Appellant contends that in order to constitute a unitary business there must be (1) unity of ownership, (2) unity of operation by centralized purchasing, management, advertising and accounting, and (3) unity of use in the centralized executive force and general system of operation. Appellant then argues that there was in its case no centralized purchasing, management, advertising or accounting between the commercial printing division and the rest of the divisions.

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The determination of whether particular functions of a business are centralized is only a means of arriving at the essential consideration., which is whether the various portions of the business depend upon or contribute to each other. As stated in the Edison Stores case at 30 Cal. 2d 472, pages 478 and 481:

This court pointed out [in Butler Bros.] that the general test for the unit rule of assessment was the unity of use and management; that is, if the operations in California contributed to the net income derived from the entire operations in the United States, then the entire business is so clearly unitary as to require a fair system of apportionment by the formula method in order to prevent either overtaxation or undertaxation.

* * *

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; . . .

It does not follow from Edison Stores or from Butler Bros. that in order to be considered unitary, a business must have the identical centralized functions that were found in those cases.

Contrary to Appellant's argument, there was at least some degree of centralized management, in ~~that~~ the person directly in charge of the commercial printing division also headed the photoengraving division and, of course, Appellant's president controlled all of the divisions. A further degree of inter-dependence ~~is~~ shown by the fact that the commercial printing division as well as other portions of Appellant's business relied upon the products of the photoengraving division. The most significant feature indicating the unitary nature of the business, however, was the existence of centralized printing. This was a vital function about which all of the operations revolved. The opportunity for savings by spreading the cost of printing over a wide base is comparable to that which was afforded by centralized purchasing in the Edison Stores and Butler Bros. cases.

That each phase of Appellant's business contributed to or depended upon the others is, in our opinion, clearly established. We therefore conclude that the entire business was unitary in nature.

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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 **25667** of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protests of **McCall** Corporation to proposed assessments of additional franchise tax in the amounts of **\$102.69** and **\$763.60** for the income years 1954 and 1955, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 18th day of June, 1963,
by the State Board of Equalization.

John W. Lynch, Chairman

Paul R. Leake, Member

Richard Nevins, Member

_____, Member

_____, Member

ATTEST: Dizwell L. Pierce, Secretary