BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
UNIVERSAL SERVICES, INC., OF TEXAS)

For Appellant: B. L. MacDonald
Comptroller

For Respondent: Crawford H. Thomas
Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to sections 25667 and 26077 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of Universal Services, Inc., of Texas, against the following proposed assessments of additional franchise tax:

Income year ended	Taxable year ended	Amount
March 31, 1959	March 31, 1959	$147.24
March. 31, 1959	March 31, 1960	163.39
March 31,1960	March 31, 1960	90.12
March 31, 1960	March 31, 1961	287027

Before respondent Franchise Tax Board acted on the protests, appellant paid the assessment for the income and taxable yea:: ended March 31, 1959, and also paid $32.18 of the assessment for the income and taxable year ended March 31, 1960. Pursuant to 'section 26078 of the Revenue and Taxation Code, we aretreating the appeal as being from the denial of claims for refund to the extent of the payments.

Appellant waived an oral hearing and submitted the following statement of grounds for its appeal:

> The taxpayer is a foreign corporation to the State of California, and the issue involved is an isolated transaction in another state, involving income from an intangible asset, The taxpayer sold a lease in the income year ended March 31, 1960. The lease was Located in Anchorage, Alaska,
>
> According to our interpretation of Revenue and Taxation Code Regulation No. 25101, income from intangible personal property, to a foreign corporation, not having a business or taxable situs in the State of California, is not includible En the unitary income subject to allocation to the State of California.

According to respondent Franchise Tax Board, appellant is a Texas corporation which has stated its business to be that of "feeding and housing contractors." It engaged in this business in California and elsewhere. For the income year ended March 31, 1960, appellant allocated a portion of its income to California by use of a formula of a kind normally prescribed by respondent where a unitary business is conducted within and without the state, Appellant excluded fsom the allocable income the gain received on the sale of a lease on a restaurant Located in Alaska, Respondent added this gain to the income subject to allocation by the formula.

Section 25101 of the Revenue and Taxation Code provides', in general, that when a taxpayer's income is derived from sources within and without the state, a portion of the income is to be allocated to California, Pursuant to this statute, respondent adopted regulation 25101, title 18, California Administrative Code., The regulation states, insofar as is relevant he-se, that:

> (a) ... Where the California activities are part of a unitary business carried on within and without the State, the portion of the unitary income subject to tax in California is generally determined by a three-factor formula of tangible property, payroll and sales....

> Basically, if the operation of a business within the State is dependent on or contributes to the operation of the business outside the State, the entire operation is unitary in character, ...
>
> * * *
>
> (d) Income From Property. (I) Nonunitary Income. Income from property, which is not a part of or connected with the unitary business, is excluded from the income of the unitary business which is allocated by formula, Income from intangible personal-property which is not a part of or connected with the unitary business,, is allocated according to situs....
>
> * * *

Appellant has the burden of establishing the facts necessary to support its position, (Cal. Admin. Code, tit. 18, § 5036,) As indicated by the regulation quoted above, income from property which is not connected with the unitary business is properly excluded from allocable income. We have previously held that gain from the sale of a manufacturing plant was subject to allocation where the plant was related to the taxpayer's unitary business. (Appeal of W. J. Voit Rubber Co., Cal, St. Bd, of Equal., May 12,1964.) Since appellant has failed to show that the restaurant lease here in question was unconnected with its unitary business, we cannot uphold its contention that the gain from the sale of the Lease was excludible from income subject to allocation by the formula method.

Although appellant also referred in its appeal. to assessments for income years other than the year involving the above issue, that issue is the only one expressly raised by appellant, Under these circumstances, we find no reason to alter respondent's action with respect to any of the income years mentioned in the appeal.,

ORDER

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 Universal Services, Inc., of Texas, against proposed assessments of additional franchise tax in the amounts and for the years specified below, be and the same is hereby sustained:

Income year ended	Taxable year ended	Amount
March 31, 1959	March 31, 1960	$163.39
March 31, 1960	March 31, 1960	57.94
March 31, $960	March 31, 1961	287.27

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, pursuant to section 26077 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the claims of Universal Services, Inc., of Texas, for refund of franchise tax in the amounts and for the years specified below be and the same is hereby sustained:

Income year ended	Taxable yea-s ended	Amount
March 31, 1959	March 31, 1959	$147.24
March 31, 1960	March 31, 1960	32.18

Done at Sacramento, California, this 8th day of February, 1966, by the State Board of Equalization.

Chairman

Member

Member

Member

Member

ATTEST: , Secretary