



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
WM. WRIGLEY J R . COMPANY)

Appearances:

For Appellant: Robert C. Elkus and
André M. Saltoun
Attorneys at Law

For Respondent : Wilbur F . Lavelle
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 protest of Wm. Wrigley Jr. Company against proposed assessments of additional franchise tax in the amounts of \$9,456.43, \$6,958.44, and \$7,493.88 for the income years 1958, 1959, and 1960, respectively,

The primary issue to be decided in this appeal is whether appellant's six foreign manufacturing subsidiaries and one holding company are part of its unitary enterprise, requiring allocation of the combined income by a formula method rather than by separate accounting .

Appellant Wm. Wrigley Jr. Company, a Delaware corporation doing business in California, has its head office and principal place of business in Chicago, Illinois. It manufactures and sells chewing gum in the United States and exports its products to Central and South America and to countries in the Far East. One wholly owned domestic subsidiary, the L. A. Dreyfus Company, procures and processes raw gums; another) Northwest ern Chemical Company, refines peppermint oil and manufactures base softeners and flavorings; and a third domestic subsidiary, Wrigley Import Company, engages in

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the procurement of chicle. Appellant concedes that the se three subsidiaries are operating in unity with it. Two foreign subsidiaries, the Amazon Trading Company, S.A., and Malayan Guttas Limited, supply the L. A. Dreyfus Company with raw gums and gum bases. Appellant also concedes that these two foreign supply subsidiaries operate as part of the unitary business .

Appellant and its five supply subsidiaries sell substantial amounts of certain raw materials used in manufacturing gum, principally chicle and essential oils, to seven wholly owned foreign subsidiaries of appellant; namely, The Wrigley Company Limited (Wrigley England), Wm. Wrigley Jr. Company, Limited (Wrigley Canada), the Wrigley Company Pty, Limited (Wrigley Australia), The Wrigley Company (N.Z.) Limited (Wrigley New Zealand), Deutsche Wrigley G.m.b.H. (Wrigley Germany), Wrigley Holding G.m.b.H. (Wrigley Holding), and Wrigley Company A.B. (Wrigley Sweden). These foreign subsidiaries, except Wrigley holding, manufacture and sell chewing gum in the countries where they are located. The sales of raw materials to the subsidiaries are channeled through appellant .

Directors and officers of appellant serve as directors for the foreign subsidiaries together with other persons who are not directors or officers of appellant. The subsidiaries submit fiscal budgets or forecasts for review by appellant . Each year personnel of appellant travel to the subsidiaries and give various kinds of assistance and training. All of the companies use the Wrigley trademark.

Appellant carries on research in connection with production, new formulas, manufacturing equipment and equipment layout. The results of such research are made available to all the subsidiaries. In addition, appellant's research department periodically checks the quality of gum produced by the foreign manufacturing subsidiaries. The latter have quality control departments but rely on appellant for research. Appellant sells machines to the subsidiaries or furnishes them with blueprints if the machine can be produced cheaper in the respective foreign country.

The manager of each subsidiary is a local resident who has a considerable amount of authority in managing the affairs of the subsidiary. Each subsidiary operates without loans from appellant, does its own advertising, purchases most of its raw materials locally, provides its own employee benefits (including pension plans and insurance programs), makes out its own payroll and prepares its own tax returns.

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Section 25101 of the *Revenue* and Taxation Code requires a taxpayer deriving income from sources both within and without the state to measure its California tax by the net income derived from or attributable to sources within this state. If a business is unitary in nature, the income attributable to California must be determined by a formula composed of property, payroll, sales or similar factors. (Butler Bros. v. McColgan, 17 Cal. 2d 664 [111 P.2d 334], aff'd, 315 U.S. 501 [86 L. Ed. 991].)

In recent decisions which broadened application of the unitary business concept, the California Supreme Court reaffirmed the tests to be used in ascertaining the existence of a unitary business. (Superior Oil Co. v. Franchise Tax Board, 6d Cal. 2d Rptr. [345, 3 8 6 P.2d 33]; Honolulu Oil Co. v. Franchise Tax Board, 60 Cal. 2d 417 [34 Cal. Rptr. 552, 386 P.2d 40].) Under one test, a unitary business exists when 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. Under another approach, a business is Unitary in nature if there is a unity of owner ship, unity of operation, and unity of use.

In the present case, the foreign manufacturing subsidiaries are wholly owned by appellant, directors and officers of appellant serve as directors for the subsidiaries, all companies use the Wrigley trademark, there is a significant amount of centralized procurement and processing of essential raw materials, and there is centralized research. In view of the decisions of the California Supreme Court and the aforementioned facts, we conclude that the *six* foreign manufacturing subsidiaries and one foreign holding company are part of appellant's unitary business. Accordingly, the combined income must be allocated by the formula method.

Appellant has suggested that the income earned by the foreign subsidiaries might be beyond the reach of California because of a constitutional question of taxing extraterritorial values and because of applicable treaty law. Appellant has not pointed out any treaties which would be violated. In regard to taxing extraterritorial values, a formula allocation does not tax foreign income; it is only a method to determine income attributable to California.

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 protest of, Wm. Wrigley Jr. Company against proposed assessments of additional franchise tax in the amounts of \$9,456.43, \$6,958.44, and \$7,493.88 for the income years 1958, 1-959, and 1960, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 15th day of December, 1966, by the State Board of Equalization.

_____, Chairman
Daniel R. Leake, Member
Joseph W. Lynch, Member
Franklin C. ..., Member
_____, Member

ATTEST: *[Signature]*, Secretary