BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
TEXTRON, INC.)

Appearances:

For Appellant : John O, Hargrove
Attorney at Law

For Respondent: Wilbur F. Lavelle
Associate *Tax Counsel*

O P I N I O N

This appeal is made pursuant to section 26077 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of Textron, Inc., for refund of franchise tax in the amounts of $8,783.11, $258.61, and $258.62 *for t'ne* taxable years 1955, 1956, and 1957, respectively, measured by income for the income years 1955 and 1956.

The question presented is whether appellant's claims for refund for the income years 1955 and *1956,* filed December *16,* 1963, *were* barred by- the statute of limitations. The question turns upon the interpretation of the following sections of the Revenue and Taxation Code: (1) section 26073a, which makes the time limit --for a franchise tax refund claim correspond with the time limit for a franchise tax assessment in a case where the taxpayer has agreed, to extend the time 'for asserting a federal income tax deficiency; (2) section 25663a, which extends the time for a franchise tax assessment to six months after an agreed period for asserting a federal income tax deficiency; (3) section 25432, which requires a taxpayer to report a change by the federal tax authorities in net income as returned; and (4) *section* 25674, which extends the time limit for a franchise tax assessment to six months after a report of a federal change,

Appellant, a Rhode Island corporation doing business within and without this state, reported net losses in its franchise tax returns for the income years 1955 and 1956. In each of these returns, appellant treated its business and that of several subsidiary corporations as a single unitary business, combining the overall income and expenses and allocating a portion of the resulting net loss to California. Subsequently, respondent issued assessments for these years, computing appellant's California income on the basis of separate accounting for its operations in this state. Appellant concurred in and paid the assessments in 1959.

In its federal income tax returns, appellant reported a net loss for 1955 and a loss carry-over to subsequent years as permitted by federal lass, (Int. Rev, Cod-e of 1954, § 172.) In connection with a federal audit, the period of limitation for asserting a federal income tax deficiency for 1955 and 1956 was extended by written agreement to June 30, 1962.

The federal revenue agent's reports for 1955 and 1956 were received by appellant on June 29, 1961, and November 16, 1961, respectively. In those reports and in a report for 1957 certain pension cost deductions were disallowed. However, a request from the District Director of Internal Revenue to the national office of the Internal Revenue Service for advice regarding the deductibility of these items was pending when the reports were issued.

Subsequently, the pension costs were held to be deductible and the losses attributable thereto for 1955, 1956, and 1957 were treated as a part of a net operating loss carry-over to 1958 in a report by the agent for 1958. That report was received by appellant on August 12, 1963. No change was made in the previously submitted reports for 1955, 1956, and 1957.

On September 9, 1963, appellant submitted to respondent a copy of the federal recomputations with respect to 1955, 1956, and 1957 as shown in the agent's report for 1958. On November 29, 1963, appellant submitted further computations to reflect the changes applicable to appellant's operations in California.

The present refund claims were filed on December 16, 1963, based upon the above data submitted to respondent. Except for the timeliness question, respondent concedes that the claims would be allowable.

It is undisputed that the basic statute of limitations set forth in section 26073 of the Revenue and

Taxation Code would bar the refund claims. Appellant, however, relies upon section 26073a and other sections which are, or allegedly are, related to it.

Section 26073a, insofar as is relevant, provides:

> If ... (2) the taxpayer has agreed with the United States Commissioner of Internal Revenue for an extension, or renewals thereof, of the period for proposing and assessing deficiencies in federal income tax for any year, the period within which a claim for credit or refund may be filed, or credit or refund allowed if no claim is filed., shall be the period within which the Franchise Tax Board may issue a notice of proposed additional assessment under such circumstances.

Section 25663a specifies the period within which the Franchise Tax Board may issue a notice of proposed additional assessment "under such circumstances," as follows:

> If any taxpayer agrees with the United States Commissioner of Internal Revenue for an extension, or renewals thereof, of the period for proposing and assessing deficiencies in federal income tax for any year, the period for mailing notices of proposed deficiency tax for such year shall be four years after the return was filed or six months after the date of the expiration of the agreed period. for assessing deficiencies in federal income tax, whichever period expires the later,

Reading the above sedtions together) the time for appellant's refund claims e-aired six months after June 30, 1962, the date of the expiration of the agreed period for assessing deficiencies in federal income tax for the years 1955 and 1956. It appears, therefore, that appellant's claims were not timely.

However, appellant contends that where there has been an agreed extension for proposing federal income tax deficiencies, section 26073a operates to bring sections 25432 and 25674 into play.

Section 25432 provides in relevant part:

> If the amount of net income for any year of any taxpayer as returned to the

> United. States ... is changed or corrected by the Commissioner ... such taxpayer shall report such change or corrected net income ... within 90 days after the final determination of such change or correction ...
>
> Section 25674 provides, in part:
>
> If a taxpayer is required to report a change or correction by the Commissioner ... and does report such change ... a notice of proposed deficiency assessment resulting from such adjustments may be mailed to the taxpayer within six months from the date such notice ... is filed, with the Franchise Tax Board by the taxpayer ...

Construing sections 26073a, 25432, and 25674 together, appellant argues that federal changes to net income (losses) for the years 1955 and 1956 were not finally determined until, at the earliest, August 12, 1963, when the deductibility of the pension costs for those years was settled; that the changes were reported within 90 days; and that the refund claims were timely, having been filed within six months after the changes were reported.

It is our opinion that section 26073a has no relation-ship with sections 25432 or 25674, and does not call those sections into play. In cases where a taxpayer agrees to a federal extension, section 26073a extends the period for refunds only in correspondence with section 25663a, which specifies the period within which respondent may make an assessment under the same circumstances. Sections 25432 and 25674 operate independently of section 26073a, and regardless of whether there is an agreement for a federal extension. In those cases where they are operative, they extend the time only for making assessments and not for claiming refunds. If changes are to be made in this statutory scheme, they must be made by the Legislature.

In view of the above conclusion, it is unnecessary to discuss a question of whether sections 25432 and 25674 would apply at all to the years here involved, where the ultimate federal change consisted of computing a loss for those years and carrying it over to 1958. (See FTB LR 280, Nov. 2, 1964.)

Appellant further contends that a de facto waiver of the federal statute of limitations was still in effect when the claims for refund were filed with respondent on

December 16, 1963, and, therefore, the claims were timely because of sections 26073a and 25663a. It maintains that the years 1955 and 1956 were impliedly left open to federal adjustment in order to increase the loss carry-over for subsequent years. Under federal law, however, the net income of a barred year may be recomputed to determine the correct net operating loss to be carried over to an open year. Such recomputation does not constitute a change in federal tax liability for the barred year. (Phoenix Coal Co. v. Commissioner, 231 F.2d 420; Springfield St. Railway Co. v. United States, 312 F.2d 754; Phoenix Electronics, Inc. v. United States, 164 F. Supp. 614.) Accordingly, there was no need and thus no implication of an intent to extend the waiver agreement beyond the expressed date of June 30, 1962.

ORDER

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

Appeal of Textron, Inc.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 26077 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claims of Textron, Inc., for refund of franchise tax in the amounts of $8,783.11, $258.61, and $258.62 for the taxable years 1955, 1956, and 1957, respectively, measured by income for the income years 1955 and 1956, be and the same is hereby sustained.

Done at Sacramento California, this 3rd day of January, 1967, by the :""a"\" Board of Equalization.

Paul R. Leake, Chairman

Richard Nevell, Member

John W. Lynch, Member

Robert C. Kirk, Member

_____, Member

ATTEST: _____, Secretary