

Appeal of Garibaldi Land Company

The sole issue **presented** here is whether appellant has established that during the years at issue it engaged in a unitary business with its affiliates so as to require the filing of combined reports and the use of formula apportionment.

In 1980, respondent sent a questionnaire! to Garibaldi Refrigerated Services, Inc. (hereinafter, "Refrigerated"), an affiliate of appellant, in order to determine whether Refrigerated should have been filing franchise tax returns in California. Based upon the information received in that questionnaire, respondent determined that Refrigerated had "a filing requirement under the provisions of the California Bank and Corporation Tax Law."

Apparently, appellant interpreted this **determi-**nation as a demand by respondent to include Refrigerated in a combined report along with its affiliates. Appellant, therefore, filed amended franchise tax returns for 1978 and 1979 utilizing the combined system of reporting income. These amended returns reflected refunds due and appellant, accordingly, filed claims for refund. Respondent denied these claims because appellant failed to provide evidence of any unitary connections among the various corporations: The denial of those claims resulted in this appeal.

Filing a combined report, of course, implies that appellant and its affiliates were engaged in a unitary business during the years at issue. (See Rev. & Tax. Code, § 25101.) The California Supreme Court has announced two general tests for determining whether a business is unitary or not. (See Butler Bros. v. McColgan, 17 Cal.2d 664 [111 P.2d 334] (1941), affd., 315 U.S. 501 [86 L.Ed. 991] (1942); Edison California Stores, Inc. v. McColgan, 30 Cal.2d 472 [183 P.2d 16] (1947).) The **record indicates** that after appellant filed the subject amended returns, respondent repeatedly requested data to substantiate the unitary nature of the business activities of appellant and its affiliates based on these tests. Rather than responding directly to these requests, appellant indicated that, while it did not, in fact, believe that the subject business activities were unitary, it had filed the amended returns and the resulting claims for refund entirely **because** of respondent's 1980 **determi-**nation that Refrigerated had "a filing requirement." Accordingly, appellant appears to argue in this appeal that respondent's denial of its claims for refund is a change in its position and that respondent should be.

Appeal of Garibaldi Land Company

estopped from so doing. Respondent, on the other hand, **argues** that it did not initially require a combined report and, therefore, it did not change its position. Even if it did, respondent contends that appellant 'has not proven that estoppel should apply in this situation. In any case, respondent argues that appellant has not presented evidence which would entitle it to use the combined system of reporting income.

We find respondent's arguments convincing. First, we find nothing in respondent's initial correspondence with Refrigerated that demands that appellant file returns utilizing the **combined** system of reporting income. Respondent merely indicated that Refrigerated had a filing requirement in California.

In any case, we find that appellant has presented no evidence which would **estop** respondent in this matter. As a general rule, an **estoppel will, be applied against the government in a tax case only where the facts clearly establish that grave injustice would otherwise result.** (Appeal of Willard S. Schwabe, Cal. St. Bd. of Equal., Feb. 19, 1974; California Cigarette Concessions, Inc. v. City of Los Angeles, 53 Cal.2d 865, 869 [3 Cal. Rptr. 675, 350 P.2d 715] (1960).) Four conditions must be satisfied before the estoppel doctrine can be applicable: **the party to be estopped must be apprised of the facts; the other party must be ignorant of the true state of the facts; the party to be estopped must have intended that its conduct be acted upon, or so act that the other party had a right to believe that it was so intended; and the other party must rely on the conduct to his injury.** (California Cigarette Concessions, Inc. v. City of LOS Angeles, -ra; City of Long Beach v. Mansell, 3 Cal.3d 462, 489 [91 Cal.Rptr. 23, 476 P.2d 423] (1970).) As indicated, appellant has presented no evidence which establishes such conditions. Under these circumstances, we fail to perceive any basis for applying the doctrine of equitable estoppel against respondent.

Lastly, we note that it is well settled that respondent's determination is presumptively correct **and** that it is for appellant to show the incorrectness thereof. (Appeal of John Deere Plow Co. of Moline, Cal. St. Bd. of Equal., Dec. 13 1961; Appeal of Saga Corporation, Cal. St. Bd. of Equal.: June 29, 1982.) As appellant has produced no evidence which would indicate that the subject business activities were unitary in nature, we have no choice but to find that respondent's determination in this matter is correct.

Appeal of Garibaldi Land Company

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 **2607.7 of the** Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claims of Garibaldi Land Company for refund of franchise tax in the amounts of **\$2,592** and \$1,976 for the income years 1978 and 1979, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this **25th day** of October , **1983**, by the State Board of Equalization, with Board Members Mr. Bennett, **Mr. Collis**, Mr. **Dronenburg**, Mr. Mevins and Mr. Harvey present.

William M. Bennett , Chairman
Conway H. Collis , Member
Ernest J. Dronenburg, Jr. Member
Richard Nevins , Member
Walter Harvey* , Member

*For Kenneth Cory, per Government Code section 7.9