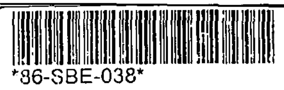

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
) No. 81A-1183-VN
TRAILS END, INC.)

OPINION ON PETITION FOR REHEARING

On September 10, 1985, this board upheld the determination of the Franchise Tax Board that appellant Trails End, Inc., was engaged in a single unitary business with its parent corporations, Nutrilite and Amway, during the income year ended August 31, 1977. Consequently, we sustained the proposed assessment of additional franchise tax against appellant in the amount of $116,617.56 for said income year. On October 9, 1985, appellant filed a timely petition under Revenue and Taxation Code section 25667, requesting a rehearing of its appeal. In its petition, appellant has made several arguments which were not discussed in our original opinion either because appellant did not raise the issue. or, if it did, we did not find it essential to a proper disposition of the appeal. We can now address these contentions for the purpose of reviewing the merits of appellant's petition.

Appellant has contended that the intercompany sales in this case do not establish unity under the so-called contribution and dependency test set forth in Edison California Stores, Inc. v. McColgan, 30 Cal.2d 472 [183 P.2d 16] (1947). Appellant asserts that this test requires a showing that the earnings of the entire group of companies were materially increased by its sales of plastic products to Nutrilite and Amway at preferential prices. It is appellant's position that only its subsidiary operations derived a profit from these sales. The parent companies, appellant argues, did not benefit but rather suffered a detriment by paying higher prices for products of a "struggling subsidiary" when they could have purchased the same items at standard prices from an

unaffiliated company. Without a group-wide benefit from these intercompany sales, appellant concludes that such sales cannot support a finding that its operations were functionally integrated with those of the parent companies.

Appellant, however, has completely misconstrued the law in this regard. First, the test is not whether the California business is dependent upon and contributes to the out-of-state business but whether the operation of the portion of the business done within this state is dependent upon or contributes to the operation of the business outside California. (Edison California Stores, Inc. v. McColgan, supra, 30 Cal.2d at 481.) Second, the argument that there must be bilateral or mutual benefits or increases in income accruing to the parties in a unitary relationship was made once before in Superior Oil Co. v. Franchise Tax Board, 60 Cal.2d 406 [386 P.2d 33] (1963). There, it was respondent who disputed the finding of unity and contended that, in order for a California concern to be an integral part of a unitary enterprise, it must appear that the operations within and without the state are necessary and essential to each other and to the functioning of the entire business. The court rejected this interpretation of the unitary test, reiterating its holding from the Edison California Stores case that "operations are unitary if the business done within the state 'is dependent upon or contributes to' the overall operations."- (Superior Oil Co. v. Franchise Tax Board, supra, 60 Cal.2d at 414; see also Honolulu Oil Corp. v. Franchise Tax Board, 60 Cal.2d 417 [386 P.2d 40] (19631.) Thus, it is the aggregate effect which determines-whether there is unity-among corporations. (Butler Brothers v. McColgan, 17 Cal.2d 664, 669 [111 P.2d 334] (1941), affd., 315 U.S. 501 [86 L.Ed. 991] (1942).) A measurable earnings increase from each company in the group is not necessary. (Appeal of Saga Corporation, Cal. St. Bd. of Equal., June 29, 1982.)

In Appeal of Browning Manufacturing Co., et al., decided on September 14, 1972, this board was confronted with a similar argument, but, unlike the present proceeding, we did not find it necessary to discuss the issue in that case since the taxpayer failed to prove its allegation that its operations contributed nothing to the other member companies of a unitary enterprise. Appellant's argument nonetheless suffers from a similar factual infirmity in addition to its unsound legal basis. Appellant has not presented any new facts in its petition which would cast doubt on our earlier finding that its manufacturing activities contributed to the operations of

the parent companies by acting as a readily available source of customized plastic products. On the alternative side of the test, the evidence remains equally intact. Appellant has done nothing to dispel our conclusion that it was dependent on these intercompany sales. Nor has appellant refuted the unitary significance of the higher profit margins that it realized on the sales. In fact, it now appears that appellant admits that preferential pricing did exist, for it states:

> In this case, we have a parent company paying higher prices for products manufactured by a California subsidiary and thereby generating more profit for the local jurisdiction then [sic] would otherwise be earned.

(App. Supp. Br., Oct. 9, 1985, at 13.)

Furthermore, appellant has vigorously argued that respondent's regulation 25120 specifically mandates a showing of strong centralized management before its activities can be considered part of a single integrated business? We cannot agree with this interpretation. Regulation 25120, subdivison (b), provides that a determination of unity turns on the facts of each case; the factor of strong centralized management is but one indicia of the unitary nature of a business. (See Appeal of Mole-Richardson Company, Cal. St. Bd. of Equal., Oct. 26, 1983.) Here we found that the integration of Nutrilite's executive forces into appellant's management team resulted in Nutrilite setting policy for appellant and exerting direct control over its operations. When combined with the element of sales to Nutrilite and Amway at preferential. prices, the factor of centralized management thus constitutes significant evidence of the unitary relationship between the companies. (See Container Corp. of America v. Franchise Tax Board, 117 Cal.App.3d 988 [173 Cal.Rptr. 121] (1981), affd., 463 U.S. 159 [77 L.Ed.2d 5451 (1983).)

Finally, appellant has contended that the unitary factors which this board relied upon in reaching its conclusion lack quantitative substantiality. However, we explained the meaning of this concept in Appeal of Saga Corporation, supra:

> The concept of "quantitative substantiality" merely distinguishes between those cases in which unitary labels are applied to transactions and circumstances which, upon examination,

> have no real substance, and those in which the factors involved show such a significant interrelationship among the related entities that they all must be considered to be parts of a single integrated economic enterprise. Each case must be decided on its own particular facts; where, as here, the taxpayer is contesting respondent's determination of unity, it must prove by a preponderance of the evidence that, in the aggregate, the unitary connections relied on by respondent are so lacking in substance as to compel the conclusion that a single integrated economic enterprise did not exist.

In the present proceedings, appellant has not demonstrated that the existing unitary connections lacked substance. Inasmuch as appellant has not submitted any new facts in its petition which would cause us to question respondent's determination of unity or our original order in this case, we will therefore deny appellant's petition for rehearing.

Appeal of Trails End, Inc.

ORDER

Upon consideration of the petition filed October 9, 1985, by appellant for rehearing of its appeal from the action of the Franchise Tax Board, we are of the opinion that none of the grounds set forth in the petition constitute cause for the granting thereof and, accordingly, it is hereby ordered that the petition be and the same is hereby de'nied and that our order of September 10, 1985, be and the same is hereby affirmed.

Done at Sacramento, California, this 4th day of February8 1986, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Collis, Mr. Bennett, Mr. Dronenburg and Mr. Harvey present.

Richard Nevins, Chairman

Conway H. Collis, Member

William M. Bennett, Member

Ernest J. Dronenbura, Jr., Member

Walter Harvey*, Member

*For Kenneth Cory, per Government Code section 7.9