

ADOPTED AUGUST 31, 1995

93-SBE-002-B

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of
PPG INDUSTRIES, INC.) No. 89A-1016
)

Representing the Parties:

For Appellant: Paul H. Frankel,
Charles J. Moll, III,
Attorneys at Law

For Respondent: Paul J. Petrozzi,
Debra S. Petersen,
Counsels

Counsel for Board
of Equalization: Tommy Leung,
Staff Counsel

OPINION ON REHEARING

The petition giving rise to a rehearing in the above entitled matter was filed by PPG Industries, Inc., pursuant to section 19048 of the Revenue and Taxation Code^{1/} in response to a decision rendered by this board on January 13, 1993, modifying the Franchise Tax Board's action on the protest of PPG Industries, Inc., against proposed assessments of additional franchise tax in the amounts of \$351,056, \$201,278, \$403,966, and \$645,849^{2/} for the income years 1977, 1978, 1979, and 1980, respectively.

In our decision of January 13, 1993, we determined that appellant was engaged in a

^{1/} Unless otherwise specified, all section references hereinafter in the text of this opinion are to sections of the Revenue and Taxation Code as in effect for the income years in issue.

^{2/} Appellant and respondent have made concessions on various non-unitary issues, including incorporation of federal adjustments, and the proposed assessments have been revised downward by \$57,613, \$37,175, \$91,237 and \$22,399 for 1977, 1978, 1979, and 1980, respectively.

unitary business with its majority-owned affiliates, and that appellant failed to sustain its burden of proving that respondent's computation of the amount of depreciation expense allowable for assets of appellant's foreign subsidiaries was incorrect. On February 10, 1993, appellant filed a petition for rehearing with respect to our findings. On August 17, 1994, we granted appellant's petition on the sole issue of the proper computation of depreciation expense.

Essentially, respondent allowed as a deduction the amount of depreciation reported by appellant's foreign subsidiaries on their financial statements (book depreciation). Appellant claims this is inappropriate because the calculation of book depreciation for financial reporting purposes reflects differences in accounting standards between the foreign countries where appellant's subsidiaries are located and the United States. Instead, appellant submits that a more reasonable method of computing depreciation for California tax purposes would be an estimate comprising a percentage of foreign assets which is equivalent to the percentage of depreciation claimed with respect to total domestic assets (28.5 percent). Appellant contends this was the same methodology used by the parties in audits for prior years.

Subsequent to the granting of this petition for rehearing, appellant did not submit any documentation to support its contention. Rather, appellant indicated it was in discussions with respondent, apparently hoping to resolve the dispute. Appellant did not file a reply brief in response to respondent's brief on the petition for rehearing, and appellant did not submit a Memorandum to Set requesting that the matter be set for oral hearing.

On the other hand, respondent has submitted copies of relevant portions of appellant's 1974 and 1976 California franchise tax returns, audit work papers, and other relevant schedules, along with letters dated January 11 and 26, 1995, addressed to appellant, to demonstrate that for the income years 1974, 1975, and 1976, straight-line book depreciation was utilized by appellant to compute the foreign subsidiaries' net income; no alternate method, as suggested by appellant, was adopted. Despite having ample opportunity to do so, appellant elected not to challenge this evidence.

As noted by respondent in its post-hearing brief, a re-computation of depreciation might have been achieved if appellant could substantiate the date each foreign asset was acquired, the cost of each asset in U.S. dollars, the specific character of the asset, and the useful life of the asset. None of this information was provided to us, and there has been no showing that appellant made any request before the appeal years to respondent to change its depreciation method prospectively. Thus, appellant's attempt to use an alternate method of depreciation must be rejected. (See Rev. & Tax. Code, § 24651; I.R.C. § 446; Treas. Reg. § 1.446.)

Accordingly, respondent's action with respect to the depreciation issue is sustained.

ORDER ON REHEARING

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 19048 of the Revenue and Taxation Code, that our order of January 13, 1993, modifying the action of the Franchise Tax Board on the protest of PPG Industries, Inc., against proposed assessments of additional franchise tax in the amounts of \$351,056, \$201,278, \$403,966, and \$645,849 for the income years 1977, 1978, 1979, and 1980, respectively, be and the same is hereby affirmed on rehearing.

Done at Sacramento, California, this 31st day of August, 1995, by the State Board of Equalization, with Board Members Mr. Klehs, Mr. Dronenburg, Mr. Andal, Mr. Sherman and Mr. Halverson present.

Johan Klehs _____, Chairman

Ernest J. Dronenburg, Jr. _____, Member

Dean F. Andal _____, Member

Brad J. Sherman _____, Member

Rex Halverson* _____, Member

*For Kathleen Connell, per Government Code section 7.9.