96-SBE-001

ADOPTED 2/22/96

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of	)	
	)	No. 91R-1287
Beneficial California, Inc.	)	
	)	

Representing the Parties:

For Appellant:	Paul H. Frankel, Attorney Eric J. Coffill, Attorney Morrison & Foerster
For Respondent:	Kathleen A. Andleman, Senior Tax Counsel
Counsel for Board of Equalization:	Tommy Leung, Staff Counsel

O P I N I O N

This appeal is made pursuant to section 19324 (formerly section 26075), subdivision (a),[1] of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of Beneficial California, Inc., for refund of franchise tax in the amounts of $768,295, $796,201, $534,948, and $282,493 for the income years ended December 31, 1984, December 31, 1985, December 31, 1986, and December 31, 1987, respectively.

[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.

The issues presented in this appeal are (1) whether California's method of worldwide combined reporting is constitutional, and (2) whether appellant's assertions of distortion and lack of unity with its affiliates (factual unity) were raised in its amended returns for the appeal years.

Appellant is a Delaware corporation with its principal place of business in California. During the years at issue, appellant was apparently engaged in a single unitary business with its Delaware-based parent and other affiliated corporations. Appellant originally filed its California franchise tax returns on a worldwide unitary basis, but later filed amended returns which removed from the combined income and from the apportionment formula the income and factors of appellant's foreign affiliates. Appellant argued that respondent's inclusion of the income of foreign affiliates in a combined report computation (worldwide combined reporting or WWCR) violated the Commerce Clause of the United States Constitution.

Appellant and respondent agreed to defer this proceeding pending the final determination in Colgate-Palmolive v. Franchise Tax Board, and in its reply brief dated September 8, 1992, on page 4, appellant stated that "on the issue of the constitutionality of WWCR, the Taxpayer agrees to be bound by a final decision in Colgate." Colgate-Palmolive was decided by the United States Supreme Court on June 20, 1994. (Colgate-Palmolive v. Franchise Tax Board, 512 U.S. ___ [129 L.Ed.2d 244] (1994).) The court decided in favor of the Franchise Tax Board, holding that respondent's method of worldwide combined reporting for unitary businesses with domestic parents was constitutional.

After the Supreme Court's decision, respondent sent appellant a stipulation to dismiss this appeal. Appellant did not agree to the stipulation, the appeal was returned to active status, and an oral hearing was scheduled for May 4, 1995. At this oral hearing, appellant attempted to raise the issues of distortion and factual unity, the appropriateness of which is also the subject of this opinion.

Appellant's 1984, 1985, 1986, and 1987 returns were due on October 15, 1985, October 15, 1986, October 15, 1987, and October 15, 1988, respectively. On August 9, 1989, appellant filed timely refund claims for the appeal years, stating "[a]s a result of the California Superior Court decision, Colgate-Palmolive vs. the Franchise Tax Board, we, Beneficial California Inc. & Affiliated Corporations, file this claim for refund on a domestic 'water's edge' basis to protect our rights in the event that worldwide combined reporting becomes Unconstitutional on judicial review of this case."

Every refund claim shall be in writing and shall state the specific grounds upon which it is founded. (Rev. & Tax. Code, §§ 19055, 26074 (renumbered as § 19322, operative Jan. 1, 1994).)

"The claim must set forth in detail each ground upon which a refund or credit is claimed and facts sufficient to apprise the Franchise Tax Board of the exact basis thereof." (Cal. Code Regs., tit. 18, reg. 19055, subd. (a).)

As appellant now knows, constitutional attacks on California's method of WWCR were considered and rejected by the United States and California Supreme Courts. (See Barclays Bank PLC v. Franchise Tax Board, 512 U.S. __ [129 L.Ed.2d 244] (1994), affirming the California Supreme Court's decision in Barclays Bank International, Ltd. v. Franchise Tax Board, 2 Cal.4th 708 [8 Cal.Rptr.2d 31] (1992); Container Corp. v. Franchise Tax Board, 463 U.S. 159, 178-179 [77 L.Ed.2d 545], rehg. den., 464 U.S. 909 [78 L.Ed.2d 248] (1983).) Thus, the United States and California Supreme Courts have placed their imprimatur on this state's use of WWCR, regardless of whether the taxpayer is a multinational bank or a non-financial institution, and regardless of whether the taxpayer is headquartered domestically or abroad. (See Barclays Bank PLC v. Franchise Tax Board, supra, and Colgate-Palmolive Co., Inc. v. Franchise Tax Board, 10 Cal.App.4th 1768 [13 Cal.Rptr.2d 761] (1992**).)** As appellant has acknowledged in its brief, the Barclays and Colgate-Palmolive decisions control the issue of WWCR in this appeal. Therefore, respondent's action with respect to that issue must be sustained.

It is also clear that, on their face, appellant's refund claims do not raise the issues of distortion and factual unity; therefore, these arguments are time-barred. (See Rev. & Tax. Code, §§ 19053, 26073 (amended and renumbered as § 19306, operative Jan. 1, 1994); Appeal of Stephanie M. Kennedy, Cal. St. Bd. of Equal., March 3, 1982.) We are not persuaded by appellant's attempts to bootstrap its distortion and factual unity arguments onto the language of its refund claim. While we agree with appellant that taxpayers have a wide degree of latitude in stating grounds in a refund claim[2] and that the validity of a refund claim should not be determined by its nomenclature,[3] such circumstances do not exist in this appeal. This is not merely a situation where the refund claim was inartfully drafted or misnamed, but one where appellant cornered itself with its own words. Clearly, distortion and factual unity issues were raised in the Colgate-Palmolive trial in Superior Court. However, appellant must be mindful that it is cast in the theater of reality and, in such a milieu, no reasonable person could interpret the restrictive language of appellant's refund claims to include such issues. Appellant is well aware that

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[2] See Wallace Berrie & Co. v. State Board of Equalization, 40 Cal.3d 60 [219 Cal.Rptr. 142] (1985), where a taxpayer indirectly and implicitly attacked the validity of a regulation in its refund claim, and was allowed to raise it later.

[3] See Newman v. Franchise Tax Board, 208 Cal.App.3d 972 [256 Cal.Rptr. 503] (1989), where the taxpayers apparently labeled a refund claim a protest, but otherwise provided the grounds upon which their claim was based.

California Superior Court decisions have no precedential value and when appellant spoke of "judicial review" in the refund claims, it could only refer to determinations at an appellate level.[4]

Furthermore, at the time appellant filed its refund claims, WWCR had already been validated by the United States Supreme Court in Container with respect to domestic entities; therefore, since a California Superior Court decision has no precedential value and most certainly does not rise to the level of a United States Supreme Court opinion, it is reasonable to assume that a domestic taxpayer (like appellant) wishing to preserve its distortion and factual unity arguments would have plainly stated them in its refund claim, instead of relying on a relatively weak constitutional attack on WWCR. Moreover, when respondent stated in its opening brief that factual unity was not at issue, appellant did not object in its reply brief; instead, it reiterated its assertion to be bound by the Colgate-Palmolive decision and made only a cursory statement regarding distortion. Indeed, neither respondent nor this board had any inkling that appellant would argue factual unity until April 1995, less than a month before the oral hearing, when appellant submitted its witness list. As to appellant's contention that its refund claims questioned the constitutionality of WWCR, and distortion and factual unity necessarily encompass constitutional issues, we believe such an interpretation to be strained, overly broad, and lacking the specificity required to apprise respondent of the true nature of these refund claims. (See Jimmy Swaggart Ministries v. Board of Equalization of California, 479 U.S. 378 [107 L.Ed.2d 796] (1990) (taxpayer's statement in its refund claim that "California cannot constitutionally impose a sales tax" does not raise all constitutional issues).) While "sandbagging" is not a term to be used lightly, it is nevertheless an apt description of what appears to have transpired in this appeal. Because of its failure to properly apprise respondent of these issues, there has been no opportunity to develop the facts necessary for either respondent or this board to evaluate these issues. Appellant did not raise the issues of distortion and factual unity in its refund claims and it may not do so now.

Accordingly, respondent's action in this matter must be sustained.

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[4] In fact, Colgate-Palmolive conceded factual unity at the appellate level (see Colgate-Palmolive v. Franchise Tax Board, 10 Cal.App.4th 1768, 1775, n.5 [13 Cal.Rptr.2d 761] (1992); surely, appellant did not intend the language of its refund claims to make such a concession binding upon it.

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 19333 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claims of Beneficial California, Inc., for refund of franchise tax in the amounts of $768,295, $796,201, $534,948, and $282,493 for the income years ended December 31, 1984, December 31, 1985, December 31, 1986, and December 31, 1987, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 22nd day of February, 1996, by the State Board of Equalization, with Board Members Mr. Klehs, Mr. Andal, Mr. Dronenburg, Mr. Sherman and Mr. Halverson present.

Johan Klehs, Chairman

Dean F. Andal, Member

Ernest J. Dronenburg, Jr., Member

Brad Sherman, Member

Rex Halverson*, Member

*For Kathleen Connell, per Government Code section 7.9.