99-SBE-005-A

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of	)	
	)	
Huffy Corporation	)	No. 96R-1263
	)	

Representing the Parties:

For Appellant: Norman H. Lane

For Respondent: Kathleen A. Andleman, Counsel

Counsel for Board of Equalization: Derick J. Brannan, Tax Counsel

OPINION ON PETITIONS FOR REHEARING

Upon consideration of the petitions for rehearing filed by both parties pursuant to Revenue and Taxation Code section 19048, we hereby amend our original opinion as indicated below, and in all other respects, deny the petitions on the basis that the arguments set forth in the petitions do not constitute sufficient grounds to grant a rehearing. In its petition, appellant argues that this Board should not limit the application of its opinion to prospective income years. Respondent does not disagree with our holding, but offers technical amendments to our original opinion. We disagree with appellant's contentions and adopt some of respondent's suggestions as part of our opinion.

Appellant agrees with this Board's ultimate conclusion that the rationale set forth in the Appeal of Joyce, Inc., decided by this Board on November 23, 1966 (Joyce), provides a better rule of law than the rule set forth in this Board's opinions in the Appeal of Finnigan Corp. (88-SBE-022), decided on August 25, 1988 (Finnigan I), the Appeal of Finnigan Corp. (88-SBE-022-A), Opinion on Petition for Rehearing, decided on January 24, 1990 (Finnigan II), and the Appeal of The NutraSweet Company (92-SBE-024), decided on October 29, 1992. However, appellant disagrees with our

decision to apply the Joyce rule on a prospective basis, and argues that this Board misapplied existing California case law on that issue. As an alternative, appellant argues that our decision to adopt Joyce for the treatment of "inbound" transactions is not necessarily inconsistent with the continued validity of Finnigan II and Nutrasweet for "outbound" transactions.

In our original opinion, we applied a three-part test in arriving at our conclusion to apply the Joyce rule on a prospective basis. That test originally appeared in the United States Supreme Court's opinion in Chevron Oil Company v. Huson (1971) 404 U.S. 97, 106-107 (Huson). Huson outlined the following three-part test: 1) the decision must establish a new principle of law by overruling past precedent; 2) the merits of the case must be weighed by looking to the prior history of the rule in question, its purpose and effect and whether retrospective operation would further or retard its operation; and 3) the inequity which would result from retroactive application must be weighed. Subsequent opinions by the United States Supreme Court limited the application of Huson, but they did not invalidate the basic three-part test. (See Harper v. Virginia Department of Taxation (1993) 509 U.S. 86.) California courts have routinely cited the Huson test with approval. (See e.g. Schettler, etc. v. County of Santa Clara (1977) 74 Cal.App.3d 990; Kreisher v. Mobil Oil Corporation (1988) 198 Cal.App.3d 398, 398-402.) As set forth in our original opinion, the circumstances of this case meet the Huson requirements for prospectivity.

Appellant argues that California courts have established "their own standards" for the prospective application of judicial decisions. Specifically, prospective application is appropriate when "considerations of fairness and public policy warrant the granting of relief" from the hardships imposed by retroactive application of a new rule of law. (Forster Shipbldg. Co. v. County of Los Angeles (1960) 54 Cal.2d 450, 458; see also Peterson v. Superior Court (1982) 31 Cal.3d 147; and Newman v. Superior Court (1989) 48 Cal.3d 973.) While appellant may be correct that the broad language used for the prospective test by California courts varies from the more specific language of the Huson test, we agree with the sentiment of the California Supreme Court in Newman v. Superior Court, supra, that "[C]alifornia cases have used a variety of formulations in approaching the question of whether departure from the general rule of retroactivity is appropriate in a particular case." (Newman, at p. 985.) Further, considerations of fairness and public policy are fully consistent with the factors laid out by the high court.[1] (Newman, at p. 986.) Consistent with that thought, we are not aware of any authority which suggests that the two statements of law compel different results, nor has appellant identified any authority to that effect. Contrary to appellant's assertion that the federal and state tests

[1] This language from the Newman case refers to a United States Supreme Court decision which applied a three part test in determining the prospectivity of a new rule of law in a criminal case. (See Stovall v. Denno (1967) 388 U.S. 293.) However, the discussion following the quoted passage clearly applies to civil cases of the type discussed in Newman, and readily applies to the instant case.

are different, the language used by the California courts is merely a general restatement of the same legal standard used by the federal courts. For that reason, we see no need to alter the holding reached in our original decision with regard to the prospective application of the Joyce rule.

Appellant also argues that this Board inappropriately usurped a legislative or policymaking function by issuing a prospective decision. Both the courts and the legislature possess the authority, "to apply an overruling decision prospectively only." (Forster, supra, at p. 459.) When reviewing Franchise and Income Tax appeals, this Board acts as a "quasi-judicial" body. (Appeal of Vortox Manufacturing Company, Cal. St. Bd. of Equal., Aug. 4, 1930; Appeals of Wilfred and Gertrude Winkenbach, et al., Cal. St. Bd. of Equal., Dec. 16, 1975.) Because this Board acts in a "quasi-judicial" capacity, we have long found ourselves "bound to apply judicially accepted doctrines." (Id.) If we are to apply judicially accepted doctrines, it appears incumbent on this Board to act as a court when issuing precedential opinions of the type issued in this case. So long as we are convinced that the facts surrounding this case merit prospective application, it is appropriate for us to issue such a decision.

Appellant also contends that this Board should "selectively" apply the Joyce rule retroactively to its case so that it may receive the benefit of its efforts in bringing the matter before this Board. (See Li v. Yellow Cab Co. (1975) 13 Cal.3d 804.) A "pure" prospective approach of the type announced in our original opinion is one in which a court decides the immediate case under old law, but announces a new rule of law for application to all subsequent cases. In contrast, "selective" prospectivity of the type advocated by appellant allows a court to apply a decision to selected litigants on a retroactive basis, but applies the rule to all other litigants on a prospective basis. Unfortunately for appellant, both the Federal and State courts have rejected the selective approach. In Harper v. Virginia Dept. of Taxation, supra, the United States Supreme Court chose to adhere to "the legal imperative to apply a rule of federal law retroactively after the case announcing the rule has already done so." (Id., at p. 98.) In Waller v. Truck Ins. Exchange, Inc. (1995) 11 Cal.4th 1, the California Supreme Court reiterated the general rule of retroactivity and further, refused "to consider the equities of each individual case in deciding the question of retroactivity." (Id., at pp. 24, 25.) These cases eschew selective prospectivity as a viable judicial doctrine. We see no need to depart from the policies adopted by both of these Supreme Courts and will not retroactively apply the Joyce rule in the instant case.

Finally, appellant argues that the Board could apply the Joyce rule to "inbound" transactions and continue to apply the Finnigan II and Nutrasweet rules to "outbound" transactions. Such a conclusion would allow clearly taxable income to escape taxation by all states and is contrary to the fundamental premise of the Uniform Distribution of Income for Tax Purposes Act which is intended to assure that "100 percent of income, no more [and] no less," will be subject to taxation. The

treatment of both inbound and outbound transactions hinges on the same legal theory and must be resolved in a consistent fashion. Hence, this Board must choose between the Joyce rule and the Finnigan II rule, and our original opinion makes that choice in favor of Joyce.

Respondent asks that we modify or amend our original opinion in three respects. First, respondent asks that we make a technical correction to footnote four of the opinion inserting "business income" for the word "tax" in the first sentences. We agree. Second, respondent asks that we delete footnote ten of that opinion because it indicates that respondent "improperly" taxed income otherwise protected from taxation by Public Law 86-272. Footnote ten is deleted. Finally, respondent asks that we expand the language on pages 8 and 9 of the opinion to more easily apply our decision to unitary groups comprised of entities with different accounting periods. As written, our opinion prospectively applies the Joyce rule to those income years beginning on or after the date of the opinion. Consistent with that holding, if a unitary group has taxpayer members whose income years begin on different dates and who are required to fiscalize their income to a common accounting period in order to apportion the group's business income, our holding shall apply to those common accounting periods which begin on or after the date of our opinion.

For all these reasons, we hereby deny both appellant's and respondent's petitions for rehearing, and amend our original decision as indicated above.

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 19048 of the Revenue and Taxation Code, that the petitions for rehearing filed by both parties are denied and that our original opinion in this matter is amended as reflected in the attached written opinion. The Joyce rule shall be applied prospectively to those income years beginning on or after the date of this opinion. If a unitary group has taxpayer members whose income years begin on different dates and who are required to fiscalize their income to a common accounting period in order to apportion the group's business income, our holding shall apply to those common accounting periods which begin on or after the date of our opinion. (Cal. Code Regs., tit. 18, § 5082.1.)

Done at Sacramento, California, this 1st day of September, 1999, by the State Board of Equalization, with Board Members Mr. Andal, Mr. Chiang, Mr. Klehs, Mr. Parrish present, Mr. Chiang not participating.

Johan Klehs, Chairman

Dean F. Andal, Member

Claude Parrish, Member

_____, Member

_____, Member