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SUPREME COURT OF THE UNITED STATES

Syllabus

ALLIED-SIGNAL, INC., AS SUCCESSOR-IN-
INTEREST TO THE BENDIX CORP. *v.*
DIRECTOR, DIVISION OF TAXATION

CERTIORARI TO THE SUPREME COURT OF NEW JERSEY
No. 91-615. Argued March 4, 1992—Reargued April 22, 1992—
Decided June 15, 1992

In order for a State to tax the multistate income of a nondomiciliary corporation, there must be, *inter alia*, a minimal connection between the interstate activities and the taxing State, *Mobil Oil Corp. v. Commissioner of Taxes of Vt.*, 445 U.S. 425, 436-437, and a rational relation between the income attributed to the taxing State and the intrastate value of the corporate business, *id.*, at 437. Rather than isolating the intrastate income-producing activities from the rest of the business, a State may tax a corporation on an apportioned sum of the corporation's multistate business if the business is unitary. *E. g.*, *ASARCO Inc. v. Idaho State Tax Comm'n*, 458 U.S. 307, 317. However a State may not tax the nondomiciliary corporation's income if it is derived from unrelated business activity which constitutes a discrete business enterprise. *Exxon Corp. v. Wisconsin Dept. of Revenue*, 447 U.S. 207, 224. Petitioner is the successor-in-interest to the Bendix Corporation, a Delaware corporation. In the late 1970's Bendix acquired 20.6% of the stock of ASARCO Inc., a New Jersey corporation, and resold it to ASARCO in 1981, generating a \$211.5 gain. After respondent New Jersey tax official assessed Bendix for taxes on an apportioned amount which included in the base the gain realized from the stock disposition, Bendix sued for a refund in State Tax Court. The parties stipulated that during the period that Bendix held its investment, it and ASARCO were unrelated business enterprises each of whose activities had nothing to do with the other, and that, although Bendix held two seats on ASARCO's board, it exerted no control over ASARCO. Based on this record, the court held that the assessment was proper, and the Appellate Division and the

State Supreme Court both affirmed. The latter court stated that the tests for determining a unitary business are not controlled by the relationship between the taxpayer recipient and the affiliate generator of the income that is the subject of the tax, and concluded that Bendix essentially had a business function of corporate acquisitions and divestitures that was an integral operational activity.

ALLIED-SIGNAL, INC. v. DIRECTOR, TAXATION DIV.

Syllabus

Held:

1. The unitary business principle remains an appropriate device for ascertaining whether a State has transgressed constitutional limitations in taxing a nondomiciliary corporation. Pp.6-16.

(a) The principle that a State may not tax value earned outside its borders rests on both Due Process and Commerce Clause requirements. The unitary business rule is a recognition of the States' wide authority to devise formulae for an accurate assessment of a corporation's intrastate value or income and the necessary limit on the States' authority to tax value or income that cannot fairly be attributed to the taxpayer's activities within the State. The indicia of a unitary business are functional integration, centralization of management, and economies of scale. *F. W. Woolworth Co. v. Taxation and Revenue Dept. of N. M.*, 458 U.S. 354, 364; *Container Corp. of America v. Franchise Tax Bd.*, 463 U.S., 159, 179. Pp.6-12.

(b) New Jersey and several *amici* have not persuaded this Court to depart from the doctrine of *stare decisis* by overruling the cases which announce and follow the unitary business standard. New Jersey's sweeping theory—that all income of a corporation doing any business in a State is, by virtue of common ownership, part of the corporation's unitary business and apportionable—cannot be reconciled with the concept that the Constitution places limits on a State's power to tax value earned outside its borders, and is far removed from the latitude that is granted to States to fashion formulae for apportionment. This Court's precedents are workable in practice. Any divergent results in applying the unitary business principle exist because the variations in the unitary theme are logically consistent with the underlying principles motivating the approach and because the constitutional test is quite fact-sensitive. In contrast, New Jersey's proposal would disrupt settled expectations in an area of the law in which the demands of the national economy require stability. Pp.12-15.

(c) The argument by other *amici* that the constitutional test for determining apportionment should turn on whether the income arises from transactions and activity in the regular course of the taxpayer's trade or business, with such income including income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations does not benefit the State here. While the payor and payee need not be engaged in the same unitary business, the capital transaction must serve an operational

ALLIED-SIGNAL, INC. v. DIRECTOR, TAXATION DIV.

Syllabus

rather than an investment function. *Container Corp., supra*, at 180, n. 19. The existence of a unitary relation between the payor and the payee is but one justification for apportionment. Pp.15-16.

2.The stipulated factual record in this case makes clear that, under this Court's precedents, New Jersey was not permitted to include the gain realized on the sale of Bendix's ASARCO stock in its apportionable tax base. There is no serious contention that any of the three *Woolworth* factors were present. Functional integration and economies of scale could not exist because, as the parties stipulated, the companies were unrelated business enterprises. Moreover, there was no centralization of management, since Bendix did not own enough ASARCO stock to have the potential to operate ASARCO as an integrated division of a single unitary business and since even potential control is insufficient. *Woolworth, supra*, at 362. Contrary to the State Supreme Court's view, the fact that an intangible asset was acquired pursuant to a long-term corporate strategy of acquisitions and investment does not turn an otherwise passive investment into an integral operation one. See *Container Corp., supra*, at 180, n. 19. The fact that a transaction was undertaken for a business purpose does not change its character. Little is revealed about whether ASARCO was run as part of Bendix's unitary business by the fact that Bendix may have intended to use the proceeds of its gain to acquire another company. Nor can it be maintained that Bendix's shares amounted to a short-term investment of working capital analogous to a bank account or a certificate of deposit. See *ibid.* Pp.17-19.

125 N.J. 20, 592 A.2d 536, reversed and remanded.

KENNEDY, J., delivered the opinion of the Court, in which WHITE, STEVENS, SCALIA, and SOUTER, JJ., joined. O'CONNOR, J., filed a dissenting opinion, in which REHNQUIST, C. J., and BLACKMUN and THOMAS, JJ., joined.