

ANALYSIS

Section 2906(c)(1) provides in pertinent part as follows:

In addition to the license fee required by subsection (b) of this section every restaurant retailer shall pay a license fee at the rate of 0.624% of the aggregate gross receipts attributable to all goods sold within the State, which fee shall be paid monthly In computing the fee due, on the aggregate gross receipts due for any month, there shall be allowed a deduction of \$35,000. For purposes of this section, all branches or entities comprising an enterprise with common ownership or common direction and control shall be allowed only 1 monthly deduction from the aggregate gross receipts from the entire enterprise.

30 Del. C. § 2906(c)(1). Petitioner argues BSP, SP and CSP should be treated as three separate entities under the statute and therefore each is entitled to a \$35,000 monthly deduction for the 1996 tax year. The Director found otherwise concluding that the three entities have common ownership or common direction and control, that the three entities are a single enterprise for purposes of Section 2906(c)(1), and that, therefore, they are entitled to only one monthly deduction.

We conclude that BSP, SP and CSP are under common ownership, direction and control. As members of the Halakos family are the only shareholders of BSP, SP and CSP and as specific members (and their spouses) own significant amounts of stock in each company, the entities are under common ownership. Stock ownership, in turn, entitles each family member to a seat on the board. This arrangement permits the Halakos family to assert common direction and control over the three entities.

We further conclude that BSP, SP and CSP constitute an enterprise as that term is used in Section 2906(c)(1). Each is engaged in an undertaking for profit, each sells similar food products

and beverages, each offers similar services to its customers and, therefore, each is engaged in the same or similar line of business. Delaware Motor Sales, Inc. v. Director of Revenue, Del. T.A.B. Dkt. No. 1286 (February 9, 2001).¹ The fact that BSP, SP and CSP maintain separate corporate identities and books, are separately licensed, have different managers and are treated as distinct taxpayers for other purposes does not alter this result. Id.; Valueline Foods of Delaware, Inc. v. Director of Revenue, Del. T.A.B., Dkt. No. 850 (December 10, 1993).

As BSP, SP and CSP constitute a single enterprise and are under common ownership, direction and control, petitioner and its related corporations are entitled only to one monthly deduction under Section 2906(c)(1).

IT IS SO ORDERED this 9th day of March, 2001.



Paul C. Hoff
Acting Chairman



Regina C. Rudzine



Cynthia L. Hughes

¹ We do not mean to suggest that all restaurants are engaged in the same line of business just because all restaurants generically engage in the sale of food and beverages. While two taxpayers could be categorized within one broad industry, e.g., restaurateurs, the nature of the goods and/or services provided by one taxpayer may be sufficiently different from the goods and/or services provided by another taxpayer such that the two would not be in the same line of business. Whether or not two or more taxpayers constitute a single enterprise will depend on the facts presented in each case.