BEFORE THE TAX APPEAL BOARD OF THE STATE OF DELAWARE

CAPANO DEVELOPMENT, INC.,	:	Rec'd 7-10-86 2:52 p.m. TAB
Petitioner,	:	
V.	:	Docket No. 836
DIRECTOR OF REVENUE,	:	
Respondent.	:	

Before: Joseph S. Yucht, Esquire, Chairman, John H. Cordrey, Esquire, Vice-Chairman, David E. Eppes, Member.

Norris P. Wright, Esquire of Morris, James, Hitchens, & Williams (argued) and Harvey S. Davidson of Halbert & Associates, P. for Petitioner.

Mark H. Froelich, Esquire, Deputy Attorney General for Director of Revenue.

DECISION AND ORDER

John H. Cordrey, Esquire, Vice-Chairman. The parties have stipulated to the facts of the case which are attached hereto as Exhibit "A" and incorporated herein by reference. In summary, Capano Development, Inc., Capano Group, and L. P. Capano Investments were involved in the ownership, construction, and rental of commercial real estate (shopping centers). The three business entities are controlled at all times pertinent to this litigation by either Louis J. Capano, Jr. or Louis J. Capano, Sr.

The Petitioner asserts the provisions of 30 Del. C. § 2114 (b)* create an exemption for it from the gross receipts tax. Section 2114 (b) provides as follows:

> For purposes of determining the amount of license fees due as provided in this part for the privilege of carrying on any separate business or occupation, all entities comprising an enterprise with common direction, control and purpose shall be considered as one.

*This entire section was repealed by 65 Del. Laws, C. 184, § 4 effective July 1, 1985.

Exhibit "A"

The State has conceded, through its brief and at oral argument, that the entities comprising this enterprise have "common direction" and "common control." This Board adopts that concession as both factually and legally correct. Thus the sole question which remains is whether the entities comprising the enterprise have a "common purpose." Neither party, in their brief or at oral argument, provided a statutory or case law definition of "purpose".

Respondent argues that "purpose" is synonymous with "licensable activity" and as the three entities perform different "licensable activities" the gross receipt tax must be applied. To rephrase the State's contention, 30 Del. C. § 2114(b) is not applicable in the instant case as the three entities do not have a "common purpose" because they have different "licensable activities."

The Board finds that the three entities had a "common purpose" and therefore the exemption provided in 30 Del. C. § 2114(b) must apply. The Board makes this determination based upon the following factual and legal findings.

At the outset the Board is required to accept the factual findings presented in the factual stipulation. Paragraph 12 of that stipulation provides: "Capano Development, Inc., Capano Group, L. P. and Capano Investments, principle purpose is the business of real estate." (Emphasis added). As all three entities' "principle purpose" is the business of real estate, it is illogical to argue that the same three entities do not have a "common purpose;" thus the Board finds that the three entities do have a "common purpose" and satisfy the requirements of 30 Del. C. § 2114 (b).

Assuming, arguendo, that the Respondent intended the factual stipulation found in paragraph 12 to be used only in the event that its legal assertion that "'purpose' and 'licensable activity' are synonymous" was rejected; the petitioner's position must nevertheless prevail. The plain meaning of the statute, the statutory construction and case law all lead to the conclusion that these entities have a "common purpose" as contemplated by the Statute.

Both parties rely upon Peter J. Kotowski v. Director of Revenue, Tax App. Bd. Dkt. No. 610, April 7, 1976 (Cain) to support their positions. The case is not enlightening as to the sole issue in this case, "what constitutes a common purpose?" Kotowski merely recites at page 2: "What does matter, in our opinion, is that we think a common direction, control and purpose existed and vested with the Petitioner." No further elucidation of the bases for determining the common purpose is found.

Kowtowski involved a taxpayer operating two service stations at separate locations, with separate books, and each being in the business form of a sole proprietorship. The taxpayer claimed the businesses to be separate, requiring a separate business license, and thus permitting each gas station to an individual quarterly gross receipts exclusion. The Board, as stated above, held that the requirements of §2114(b) were met and thus the two businesses were to be treated as one and receive only one quarterly gross receipts exclusion.

Respondent argues that the two operations in Kowtowski were identical in nature and conducted by one taxpayer, thus

only one license was required. Respondent next argues that in the case at bar "each entity had a separate purpose requiring a separate business license . . ." and therefore does not constitute a single enterprise. Respondent misreads Kowtowski.

Kotowski holds that because the entities have common direction, control and purpose the entities must be treated as one, requiring (and permitting) only one business license (and one attendant quarterly gross receipts exclusion). Kotowski does not stand for the proposition that because more than one license is required (because a different occupation or "licensable activity" is engaged in) the entities are not one enterprise. The question is not how many licenses are required (or as in Kotowski needlessly obtained), but whether the entities comprise an enterprise with common direction, control and purpose.

In absence of a statutory definition, words should be construed in a manner consistent with their general meaning. "Purpose" is defined by Webster's Collegiate Dictionary, 5th Edition as "That which one sets before himself as an object to be attained; intention . . . The object or result aimed at . . . " Such a definition is consistent with the interpretation proposed by petitioner, that the three entities had a common object (or result) of owning, constructing and leasing a shopping center.

On the other hand, the definition of "purpose" can not be equated with "licensable activity." Many vertically integrated corporations (e.g. steel industry, oil manufacturer and sales) must by their very nature have two or more "licensable activities."

Yet their "purpose" is to maximize its profit in selling a product by reaping the profit from each step, from acquiring the raw material to the final sale to the end consumer.

If §2114(b) is read, deleting some of the alternative language, the point becomes even clearer. In determining the tax due " . . . for the privilege of carrying on any separate . . . occupation, all entities comprising an enterprise with common . . . purpose [or as Respondent contends "licensable activity"] shall be considered as one." (Emphasis and bracketed material added). Each "separate occupation" by its very nature is a different "licensable activity." If a "licensable activity" is different, it can not be "common." Thus, to interpret "purpose" as proposed by the Respondent, there could never be separate occupations which comprise an enterprise with common purpose, for each occupation (in general) is a different licensable activity. While the Respondent's position might be tenable when used in connection with "separate business," it has no merit when used with "separate occupation."

The Legislature could have easily provided the result offered by Respondent by using some of the language it employed earlier in the same Statute. Had the same Statute in pertinent part read " . . . an enterprise with common direction, control and the same license . . ." there would be no question in interpretation. The Legislature's failure to utilize the same word "license" that it had used just one sentence before demonstrates that "purpose" was intended to mean something other than licensable activity.

As Respondent has conceded that the three entities have common direction and ownership, and the Board has found that the three entities factually and legally have a common purpose, the provision of 30 Del. C. § 2114(b) must apply.

The Director's determination as set forth in its notice of assessment is therefore abated and reversed.

IT IS SO ORDERED.