



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal)
)
 of)
)
 NATIONAL CYLINDER GAS COMPANY)
 (Successor to The Girdler Corporation))

Appearances:

For Appellant: John F. Forbes & Company, Certified
Public Accountants
For Respondent: Crawford H. Thomas, Associate Tax
Counsel

O P I N I O N

This appeal is made pursuant to Section 25667 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of National Cylinder Gas Company (Successor to The Girdler Corporation) to proposed assessments of additional franchise tax in the amount of \$146.29 for each of the taxable years 1947 and 1948, the tax for each year being measured by the income of the year 1947.

The Girdler Corporation was a Delaware corporation with its principal office in Kentucky. It qualified to do business in California in 1946. In 1953 it merged with the National Cylinder Gas Company, Appellant herein,

The Girdler Corporation derived its income from the manufacture and sale of heat transfer equipment, high frequency di-electric heating equipment, other electronic equipment, and chemicals; the engineering, construction and erection of chemical plants and the licensing of patents owned by it. The proposed assessments are the result of the allocation by the Franchise Tax Board of a portion of royalty income to this State for the income year in question,

It is conceded by Appellant that Girdler was engaged in a unitary operation in this and other states, and that a portion of its unitary income was allocable to this State. The Franchise Tax Board contends that licensing the use of the patents constituted an integral part of Girdler's unitary business and that income therefrom was includible in allo-

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cable income, Appellant contends that patents owned by Girdler were intangible assets having a taxable **situs** at the principal office of **the** corporation in Kentucky, that licensing the use of the patents was an activity unconnected with its unitary business of manufacturing and selling and that no portion of the royalty income was allocable to this State. Appellant has not directed our attention to any authorities in support of its contentions,

Under ordinary circumstances intangibles are deemed to have a **situs** for tax purposes at the domicile of their owner. Rainier Brewing Company v. McColgan 94 Cal., App. 2d 118; Miller v. McColgan, 17 Cal. 2d 432; Curry v. McCannless, 307 U.S. 357.

We have consistently held, however, that income from intangibles is includible in unitary income and subject to allocation if the acquisition, management and disposition of the intangibles constitute integral parts of the unitary **business**. Appeals of Marcus-Lesoine, Inc., decided July 7, 1942; Houghton Mifflin Company, decided March 28, 1946; International Business Machines Corporation, decided October 7, 1954.

Appellant has not furnished us with any information relating to the acquisition or development of the patents in question, or the extent of their use in its unitary business of manufacturing and selling. The Franchise Tax Board, however, has stated, and Appellant has not denied, that the patents are used by Appellant in its manufacturing operations. Thus, it appears that Appellant did not acquire or hold the patents as an investment separate from its unitary operations. It is our conclusion, accordingly, that all of the income realized from the exploitation of the patents is unitary income and subject to allocation,

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 25667 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of **National** Cylinder Gas Company (Successor to The Girdler Corporation) to proposed

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assessments of additional franchise tax in the amount of \$146,29 for each of the years 1947 and 1948 be and the same is hereby sustained,

Done at Sacramento, California, this 5th day of February, 1957, by the State Board of Equalization+

Robert E. McDavid, Chairmen

George R. Reilly, Member

Paul R. Leake, Member

_____, Member

_____, Member

ATTEST: Dixwell L. Pierce, Secretary