



BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
ROCKWELL MANUFACTURING COMPANY )

Appearances:

For Appellant: Robert H. Walker, Attorney at Law  
For Respondent: John S. Warren, 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 in denying the protest of Rockwell Manufacturing Company to a proposed assessment of additional franchise tax in the amount of **\$573.75** for the income year ended November **30, 1944**.

Appellant is a Pennsylvania corporation engaged in the manufacture and sale of valves. It has several subsidiaries which engage in a unitary business with Appellant in this and other states and in foreign countries. For the year in question Appellant filed a consolidated return and allocated by formula a portion of the combined income, exclusive of royalty income, to this State.

The basic patents for valves manufactured by Appellant and its subsidiaries were obtained through the acquisition of the Merco-Nordstrom Valve Company. Although those patents have long since expired, Appellant has improved and added to its original line of valves and has obtained and holds patents on all of its new and improved designs. Most, if not all, of the new patents have been developed as the result of an extensive research program carried on by Appellant and its subsidiaries. In computing the combined allocable net income, both the expenses of the research program and the **capitalized** costs annually written off as depreciation on the patents are deducted from unitary business income.

The patents are used in the course of Appellant's manufacturing activities and are also licensed to other manufacturers. Royalty income received under these licensing agreements was excluded from allocable income by Appellant on **the** ground that it constituted income from intangibles and was taxable only at the domicile of the owner. The Franchise

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Tax Board takes the position that the patent royalties are **includible** in unitary income and are subject to apportionment on the same basis.

In our opinion, the argument that income from intangibles is not subject to apportionment is untenable when applied to intangibles which are acquired, used and managed as an integral part of the multi-state unitary business. As respects such intangibles, Appellant's position is not supported by the authorities on which it relies. In Rainier Brewing Co. v. McColgan, 94 Cal, App. 2d 118, the taxpayer was a domestic corporation doing business in California only. Both Hazeltine Corporation v. McColgan, decided by the Sacramento County Superior Court on May 22, 1942, and Commonwealth v. Radio Corporation of America (Ky.), 184 S.W. 2d 250, involved a foreign corporation not doing business within the state asserting the tax. None of these decisions is applicable to a taxpayer carrying on a unitary business within and without the taxing state.

In Appeal of International Business Machines Corporation, decided October 7, 1954, and Appeal of National Cylinder Gas Company, decided February 5, 1957, we specifically held that **royalty income** derived from the licensing of patents acquired and used as an integral part of a unitary business was **includible** in **allocable** income. Appellant's arguments, in the absence of relevant judicial authority, fail to convince us that those decisions should be overruled,

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 in denying the protest of Rockwell Manufacturing Company to a proposed assessment of additional franchise tax in the amount of \$573.75 for the income year ended November 30, 1944, be and the same is hereby sustained.

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Done at Sacramento, California, this 19th day of  
February, 1958, by the State Board of Equalization.

Geo. R. Reilly, Chairman

J. H. Quinn, Member

Paul R. Leake, Member

Robert E. McDavid, Member

Robert C. Kirkwood, Member

ATTEST: Dixwell L. Pierce, Secretary