

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA,

In the Matter of the Appeal of }
 }
HIGHLAND CORPORATION }

Appearances:

For Appellant: Henry C. Diehl, Attorney at Law

For Respondent: A. Ben Jacobson, 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 protests of Highland Corporation to proposed assessments of additional franchise tax in the amounts of \$2,437.19 and \$1,726.85 for the income years ended May 31, 1952, and May 31, 1953, respectively.

Appellant is a Nevada corporation with its principal office in Los Angeles. During the years involved in this appeal it derived income ~~from lumber activities in Oregon, from oil operations in New Mexico, and from two California enterprises: (1) a partnership in Pacific Crane and Rigging Co., which rented equipment to contractors, and (2) a substantial minority interest in Macco Corporation, a company engaged in the heavy construction business.~~

Appellant combined its income from all sources and allocated a part of the combined net income to California by use of the three-factor formula of property, payroll, and sales. The Franchise Tax Board determined that Appellant was not engaged in a unitary business and refused to accept the formula allocation of income. It computed, by ~~separate accounting, the income from the California enterprises, the Oregon lumber operations and the New Mexico oil operations.~~ California taxable income was thus increased in the amounts of \$45,498.38 and \$43,171.43 for the respective income years involved.

The question presented is whether or not Appellant was engaged in a unitary business. If it was, formula allocation is appropriate; if it was not, separate accounting is the appropriate method of determining the income attributable to California (Butler Brothers, Inc. v.

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McColgan, 17 Cal. 2d 664, affirmed 315 U.S. 501; Edison California Stores Inc. v. McColgan, 30 Cal. 2d 472; Regulation 24301 (now 25101), Title 18, California Administrative Code),

Appellant states that "All of the business activities were closely controlled and supervised from Appellant's principal.-office by executives who were stationed and operated out of said office" and then concludes that the business was unitary. The premise does not support the conclusion. As indicated by the foregoing authorities, a business is to be considered unitary if the various parts contribute to or are dependent upon one another. To establish the unitary nature of a business, accordingly, it is necessary to show some relationship between the earnings or losses of its various parts. From all that appears in the record in this matter the earnings or losses of its several segments would have been substantially the same whether or not they had been under common ownership. We conclude that Appellant has failed to show that it was engaged in a unitary business and we must, therefore, sustain the action of the Franchise Tax Board in using separate accounting for the purpose of determining income from California sources,

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 protests of Highland Corporation to proposed assessments of additional franchise tax in the amounts of \$2,437.19 and \$1,726.85 for the income years ended May 31, 1952, and May 31, 1953, respectively, be, and the same is hereby sustained.

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Done at Sacramento, California, this 20th day of May,
1959, by the State Board of Equalization.

Paul R. Leake _____, Chairman

John W. Lynch _____, Member

Richard Nevins _____, Member

George R. Reilly _____, Member

_____, Member

ATTEST: Dixwell L. Pierce _____, Secretary