

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
WORTHINGTON CORPORATION, SUCCESSOR)
TO THE ANNIN CORPORATION)

For Appellant: John F. O'Dea, Attorney at Law

For Respondent: Burl D. Lack, Chief Counsel;
 Crawford H. Thomas, Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to section 26077 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of Worthington Corporation, as successor to The Annin Corporation, for refunds of franchise tax and interest in the total amount of \$67,404.98 for the taxable year ended May 31, 1960.

The Annin Corporation (hereafter referred to as Annin) was a California corporation engaged in the manufacture and sale of valves. All of its stock was owned by Douglas Annin. The corporation reported upon the basis of a fiscal year ending May 31, As of May 31, 1958, Annin's net worth according to its books was \$1,403,671.70 and its net profit for the year ended on that date was \$1,214,906.71.

Worthington Corporation (hereafter referred to as Worthington or as appellant) is a Delaware corporation qualified to do business in California. It is engaged in the design, manufacture and sale of mechanical equipment* It reports on a calendar year basis.

In November 1958, Worthington applied to the Division of Corporations of this state for a permit to negotiate for the acquisition of all of Annin's assets in return for shares of Worthington's common stock. A permit was issued which authorized Worthington to negotiate with Annin or its shareholders for the purpose of acquiring its assets or its stock. Worthington thereafter submitted to Annin a "Purchase and Sale Agreement!" proposing to purchase Annin's assets in exchange for shares of

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Worthington's stock. Annin preferred to "go the stock route" and on January 23, 1959, there was executed an "Agreement for Exchange of Stock between Worthington Corporation and Douglas H. Annin." Pursuant to that agreement, on January 30, 1959, Mr. Annin transferred to Worthington all of his stock in Annin and Worthington issued to him 74,755 shares of its \$10 par value common stock. These shares constituted 4.47 percent of the total outstanding common stock of Worthington. five days thereafter, Douglas Annin disposed of one-third of the Worthington shares which he had received. On May 29, 1959, Annin transferred all of its assets to Worthington and dissolved. The plant and business of Annin was thereafter operated as a division of Worthington,

On February 4, 1960, a franchise tax return for the income year ended May 31, 1959, taxable year ended May 31, 1960, was filed on behalf of Annin. This return reported a net income of \$1,408,043.92. A tax in the amount of \$56,321.76 was paid at the time the return was filed. Subsequently there was paid an additional tax of \$10,164.31 for the same taxable year, plus interest of \$918.91.

Worthington, as successor to Annin, claimed a refund of the tax and interest on the ground that Annin did not operate during the taxable year ended in 1960. Respondent denied the claim, taking the position that Annin dissolved pursuant to a reorganization. If respondent's position is correct, Worthington was liable for the tax and is not entitled to a refund. (Rev. & Tax, Code, Sec. 23253, subd. (b).)

Substantially all of the contentions raised by appellant were answered adversely to its position in the Appeal of Heating Equipment Mfg. Co., Cal. St. Bd. of Equal., Nov. 13, 1960 3 CCH Cal. Tax Cas. Par. 201-636, 2 P-H State & Local Tax Serv. Cal. Par: 13234, and in the Appeals of Diamond Gardner Corp., this day decided. In those cases, transactions not materially different from the one now before us were held to constitute mergers within the meaning of section 23251, subdivision (c) of the Revenue and Taxation Code and, therefore, reorganizations.

We stated in those decisions that a requisite of a merger for purposes of the relevant statute is that the stockholder of the transferor retain a proprietary interest in the transferee, and interest which is definite and material and which represents a substantial part of the value of the thing transferred. Based upon the book net worth of Annin and its excellent record of earnings, the Worthington stock which Annin's stockholder received was valued well in excess of a million dollars. Taking into consideration the fact that Annin's stockholder almost immediately disposed of a third of those shares, he still held many thousands of shares worth a million dollars or more. This was beyond doubt a "definite and material" interest and represented a "substantial part of the value of the thing transferred,"

We conclude that the transaction in question was a merger as the term is used in Section 23251, subdivision (c) of the Revenue and Taxation Code,

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Appellant contends, without citing any authority, that the imposition of the tax violates the Due Process Clause and the Commerce Clause of the United States Constitution. The contention with respect to the Due Process Clause is grounded upon the claim that no privilege has been exercised upon which the tax may be laid since Annin did no business during the taxable year ended May 31, 1960. The contention with respect to the Commerce Clause is on the ground that Worthington does business in interstate commerce.

In our opinion, a sufficient basis for the tax may be found in the privilege which Worthington exercised by operating what was formerly the business of Annin. And there is no constitutional objection to imposing a franchise tax simply because some of the business is interstate in nature. (International Harvester Co. v. Evatt, 329 U.S. 416 (91 L.Ed. 390).)

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 26077 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claims of Worthington Corporation, as successor to The Annin Corporation, for refunds of franchise tax and interest in the total amount of \$67,404.98 for the taxable year ended May 31, 1960, be and the same is hereby sustained,

Done at Sacramento, California, this 5th day of February, 1963, by the State Board of Equalization,

John W. Lynch, Chairman

Geo. R. Reilly, Member

Paul R. Leake, Member

Richard Nevins, Member

 , Member

ATTEST: Dixwell L. Pierce, Secretary