



BEFORE **THE** STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of }
JOSEPH MAGNIN CO., INC., SWIG'S }
and JOMANCO, INC. }

Appearances:

For Appellants: Jack E. Gabriel, Certified Public
Accountant, and
Anthony S. **Nocita, Secretary-**
Treasurer of Joseph Magnin Co., Inc.

For Respondent: Peter S. Pierson,
Associate Tax Counsel

O P I N I O N

These appeals are made pursuant to section 25667 of **the Revenue** and Taxation Code from the action of the Franchise Tax Board on the protests of the following corporations against proposed assessments of additional franchise tax in the amounts and for the years indicated below:

<u>Appellant</u>	<u>Income Year</u>	<u>Taxable Year</u>	<u>Amount</u>
Joseph Magnin Co., Inc.	6/30/61	6/30/62	\$ 6,465.00
Swig's	6/30/61	6/30/62	259.00
Jomanco, Inc.	6/30/61	6/30/61	519.00
Jomanco, Inc.	6/30/61	6/30/62	519.00

The appeals initially filed by Joseph Magnin Co., Inc., and **Swig's** also related to assessments for the income year ended June 30, 1960, taxable year ended June 30, 1961. The parties have stipulated that the appeals-with respect to that income year and taxable year are to be dismissed.

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The single issue before us is whether appellants and J. J. Henkel Co., a related California corporation, are engaged in a unitary business with Specialty Shops, Inc., a Nevada corporation.

Joseph Magnin Co., Inc., Jomanco, Inc., Swig's and J. J. Henkel Co. are California corporations engaged in retail sales of women's wearing apparel at stores located in this state. Specialty Shops, Inc., is a Nevada corporation engaged in a similar business in Nevada. Jomanco, J. J. Henkel Co., and Specialty Shops, Inc., are wholly owned subsidiaries of Joseph Magnin Co., Inc., and Swig's is a wholly owned subsidiary of Specialty Shops, Inc.

The above corporations have interlocking boards of directors and staffs of officers. All of the corporations' participate in centralized purchasing, accounting and advertising arrangements; Joseph Magnin Co., Inc., does all of the billing of customers. Each company uses the trade name "Joseph Magnin" and a Joseph Magnin charge plate is honored at all stores.

Joseph Magnin Co., Inc., acquired the stock of Specialty Shops, Inc., in 1960. Before that date, the stock of both of those corporations was owned in part by the same individuals. The interrelationships in the operations of the two corporations were much the same before and after 1960. Separate tax returns have always been filed by these companies and their litigation has been handled separately, a Nevada firm of attorneys representing the Nevada corporation and a California firm of attorneys representing the California corporation. The wages and employment of personnel of the Nevada store are handled by the local management of Specialty Shops, Inc.

Respondent determined that since the year 1960 all of the corporations have been engaged in a unitary business and that, for franchise tax purposes, their entire net income should be combined and allocated within and without the state by use of an allocation formula as provided by section 25101 of the Revenue and Taxation Code.

In Butler Bros. v. McColgan, 17 Cal. 2d 664 [111 P.2d 3341, aff'd, 315 U.S. 501 [86 L. Ed. 991], the California Supreme Court held that a unitary business was definitely established by the existence of (1) unity of ownership, (2) unity of operation evidenced by central purchasing, advertising, accounting and management, and (3) unity of use in the centralized executive force and general system of operation. In Edison California Stores, Inc. v. McColgan, 30 Cal. 2d 472 [183 P.2d 16], the court also declared that a unitary enterprise

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exists when the operation of the portion of the business done within the state is dependent upon or contributes to the operation of the business without the state. These tests were recently reaffirmed and broadly interpreted in Superior Oil Co. v. Franchise Tax Board, 60 Cal. 2d 406 [34 Cal. Rptr. 545, 386 P.2d 33] and Honolulu Oil Corp. v. Franchise Tax Board, 60 Cal. 2d 417 [34 Cal. Rptr. 552, 386 P.2d 401].

Appellants urge that Specialty Shops, Inc., has developed as a separate and distinct corporation. But the facts show that the operation of that corporation has always been closely related with the operation of Joseph Magnin Co., Inc. The unitary nature of those operations was definitely established in 1960 when Specialty Shops, Inc., became a wholly owned subsidiary of Joseph Magnin Co., Inc. The amount of local autonomy which Specialty Shops exercises is far outweighed by the unitary features which exist. We have no hesitation in concluding that the operations of all of the corporations involved constitute a unitary business.

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 protests of the following corporations against proposed assessments of additional franchise tax in the amounts and for the years indicated below be sustained.

<u>Appellant</u>	<u>Income Year</u>	<u>Taxable Year</u>	<u>Amount</u>
Joseph Magnin Co., Inc,	6/30/61	6/30/62	\$ 6,465.00
Swig's	6/30/61	6/30/62	259.00
Jomanco, Inc.	6/30/61	6/30/61	519.00
Jomanco, Inc.	6/30/61	6/30/62	519.00

It is further ordered, pursuant to a stipulation by and between Joseph Magnin Co., Inc., Swig's and the Franchise Tax Board, filed August 31, 1965, that the appeals from the action of the Franchise Tax Board on protests against proposed assessments of additional franchise tax in the amounts and for the years indicated below be dismissed.

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<u>Appellant</u>	<u>Income Year</u>	<u>Taxable Year</u>	<u>Amount</u>
Joseph Magnin Co., Inc.	6/30/60	6/30/61	\$ 962.00
Swig's	6/30/60	6/30/61	209.70

Done' at Sacramento, California, this 5th
day of October, 1965, by the State Board of Equalization.

John W. Linn Chairman
Arthur H. Stein Member
Paul R. Leake Member
Geo. Stone Member
Geo. Stone Member

Attest: *J. W. Linn* Secretary