

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of **the Appeals of**)
)
'CAGAN HOMES, INC., 'FONTAINE HOMES, INC.,)
MARLBORO REALTY FUND (NOW KNOWN AS LARWIN)
COMPANY), DENNY HOMES, INC., GRETNA SQUARE, ')
INC., WILLIAM DEVELOPMENT CORP., JAMES PARK,)
INC., GORHAM HOMES, 'INC., KAY HOMES, INC., ')
LARABEE PARK, INC., LARWIN DEVELOPMENT CORP.,)
LONI PARK, INC., BARCLAY HOMES, INC., AND)
SEAGATE INVESTMENT CORE'.)

Appearances:

For Appellants: Richard G. Brawerman and
James A. Rabow, Attorneys at Law

For Respondent: Tom Muraki '
Associate Tax Counsel

O P I N I O N

These appeals are made pursuant to section 26077 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of the following corporations for refund of franchise tax for the income year ended May 31, 1960, in the amounts indicated below:

<u>Appellant</u>	<u>Amount</u>
Cagan Homes, Inc.	\$ 959.54
Cagan Homes, Inc., and Fontaine Homes, Inc., transferee of Cagan Homes, Inc., and Marlboro Realty Fund (now known as Larwin Company)	1,215.28
Denny Homes, Inc.	261.34

Appeals of Cagan Homes, Inc., 'et al.

<u>Appellant</u>	<u>Amount</u>
Denny Homes, Inc., and Gretna Square, Inc., transferee of Denny Homes, Inc., and William Development Corp.	\$ 414.45
James Park, Inc.	180.43
James Park, Inc., and Gorham Homes, Inc., transferee of James Park, Inc., and Marlboro Realty Fund (now known as Larwin Company)	321.65
Kay Homes, Inc.	1,332.45
Kay Homes, Inc., and Larabee Park, Inc.; transferee of Kay Homes, Inc., and Larwin Development Corp.	1,643.02
Loni Park, Inc.	182.41
Loni Park, Inc., and Barclay Homes, Inc., transferee of Loni Park, Inc., and Seagate Investment Corp.	323.92

The question presented is whether the activities of Cagan Homes, Inc., Denny Homes, Inc., James Park, Inc., Kay Homes, inc., and Loni Park, Inc., during the year ended May 31, 1961, constituted "doing business;" If so, those corporations (hereafter referred to as "appellants") are subject to franchise tax for that year; measured by income of the **preceding** year. If **not**, they are entitled to the refunds claimed. (Rev. & Tax. Code, § 23151.) The other corporations named herein are concerned only as transferees or successors.

Appellants were incorporated in 1958 as **subsidiaries** of corporations controlled by **two** individuals, Lawrence Weinberg and William Weinberg. Two persons other than the Weinbergs owned approximately 20 percent of appellants' stock.

Appellants adopted a fiscal year ending May 31 and engaged in the construction and sale of homes, the last of which they sold in the summer of 1959. In the latter part of 1959, Kay Homes, Inc., and Cagan Homes, Inc., acquired for cash substantially all the stock of three newly formed corporations which also engaged in the construction and sale of homes. Early in 1960, Kay Homes, Inc., and Loni Park, Inc., acquired non-interest bearing notes of, and a **portion** of the stock of, a corporation controlled by the Weinbergs. At **about**

Appeals of Cagan Homes, Inc., et al.

the same time, Denny Homes, Inc., acquired non-interest bearing notes of another corporation controlled by the Weinbergs. At the close of the fiscal year ended May 31, 1960, Kay Homes, Inc., Cagan Homes, Inc., and Loni Park, Inc., held the stock which they acquired as described above and all of the appellants held non-interest bearing notes.

On June 10, 1960, all of the appellants redeemed the shares of their minority stockholders at book value. In August 1960, Denny Homes, Inc., received full payment of the note which it held. In November 1960, Cagan Homes, Inc., and Kay Homes, Inc., liquidated their subsidiaries, receiving cash and non-interest bearing accounts receivable. In January 1961, each appellant transferred its entire assets, consisting of cash and notes plus, in the cases of Kay Homes, Inc., and Loni Park, Inc., a small amount of stock, in exchange for a portion of the stock of another corporation. The stock was issued by four corporations in all, a part of whose stock was also acquired by other corporations controlled by the Weinbergs. It was intended that the four corporations issuing the stock would build and sell homes.

On June 9, 1961, appellants were, dissolved.

Summarizing the activities of appellants during the taxable year in question, the year ended May 31, 1961: (1) Cagan Homes, Inc., and Kay Homes, Inc., liquidated subsidiaries, (2) Denny Homes, Inc., received payment of a non-interest bearing note, (3) all appellants redeemed some of their own stock and (4) all acquired stock of other corporations.

Without advancing specific arguments as to other activities, respondent contends that the acquisition of stock of other corporations and the liquidation of subsidiaries, viewed separately or in combination, constituted doing business. Since all of the appellants acquired stock of other corporations, we shall first consider the effect of that activity.

Section 23101 of the Revenue and Taxation Code provides that "'Doing business' means actively engaging in any transaction for the purpose of financial or pecuniary gain or profit." The scope of this definition is illustrated by a decision of the California Supreme Court holding that a corporation which made a single purchase of bonds in one year, sold part of them in the following year, and made several

Appeals of Cagan Homes, Inc., et al.

purchases and sales of stock in two subsequent years, was engaged in business during all of these years. (Carson Estate Co. v. McColgan, 21 Cal. 2d 516 **E-133 P.2d 636**.)

The crux of appellants' position is that they were holding corporations *within* the meaning of *section 23102 of the* 'Revenue and Taxation Code, which provides that:

Any corporation holding or organized to hold stock ~~or~~ bonds of any other corporation or corporations, and not trading in stock or bonds or other securities held, and engaging in no activities other than the receipt and disbursement of dividends from stock or interest on bonds', is not a corporation doing business in this State for the purposes of this chapter.

Appellants argue that *since* holding corporations are *not* regarded as doing business, the acquisition of the stock which they hold is likewise outside the "doing business" concept.

We are not called upon to determine whether the initial acquisition of stock by a corporation organized for the sole purpose of holding such stock is a transaction constituting business.' We are concerned, rather, with corporations which were organized to and did engage in business in every sense of the term prior to their acquisitions of stock and which acquired the 'stock without restriction or 'commitment.

A single acquisition of stock may **constitute doing** business, just as a single acquisition of bonds constituted doing business in Carson Estate Co. v. McColgan, supra. Appellants emphasize that the taxpayer *in* that case sold in the following year some of the bonds *it* acquired. But the court did not suggest that the character of the acquisition depended upon the disposition in a later year.

Appellants have not specified the precise reason for their acquisition of stock, but it must **be deduced** that the purpose was financial or pecuniary gain or profit, whether in the form of dividends, gain **on sale** of the stock or financial benefits from the 'corporate structure evolved. The acquisitions, we conclude, constituted doing business.'

Appeals of Cagan Homes, Inc., et al.

In view of our conclusion with respect to the acquisitions of stock, it is unnecessary to consider the effect of other activities by appellants.

ORDER

Pursuant to the views expressed in the opinion of the **board** on file in this proceeding, and good cause appearing therefor,

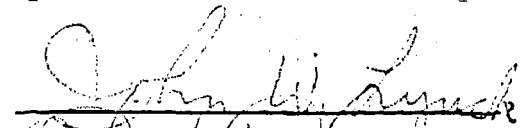

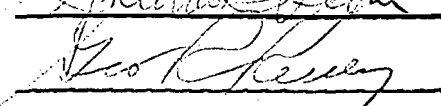
IT IS HEREBY ORDERED, **ADJUDGED** AND DECREED, pursuant to section **26077** of the Revenue and **Taxation** Code, that the action of the Franchise Tax Board in denying the claims of the following corporations for refund of franchise tax **for the** income year ended May **31, 1960**, in the amounts indicated below be and the same is hereby sustained.

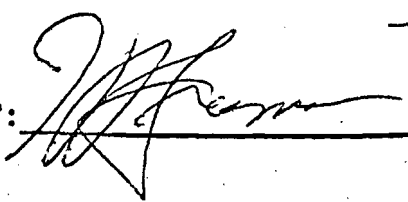
<u>Appellant</u>	<u>Amount</u>
Cagan Homes, Inc.	\$ 959.54
Cagan Homes, Inc., and Fontaine Homes, Inc., transferee of Cagan Homes, Inc., and Marlboro Realty Fund (now known as Larwin Company)	1,215.28
Denny Homes, Inc.	261.34
Denny Homes, Inc., and Gretna Square, Inc., transferee of Denny Homes, Inc., and William Development Corp..	414.45

Appeal of Cagan Homes, Inc., et al.

<u>Appellant</u>	<u>Amount</u>
James Park, inc.	\$ 180.43
James Park, Inc., and Gorham Homes, Inc., transferee of James Park, Inc., and Marlboro Realty Fund (now known as Larwin Company)	321.65
Kay Homes, Inc.	1,332.45
Kay Homes, Inc., and Larabee Park, Inc., transferee of Kay Homes, Inc., and Larwin Development Corp.	1,643.02
Loni Park, Inc.	182.41
Loni Park, Inc., and Barclay Homes, Inc., transferee of Loni Park, Inc., and Seagate Investment Corp.	323.92

Done at Sacramento, California, this 30th day
of November, 1965, by the State Board of Equalization.


_____, Chairman

_____, Member

_____, Member
_____, Member
_____, Member

ATTEST: 
_____, Secretary