



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
THE WEATHERHEAD COMPANY }

Appearances:

For Appellant: Charles Davenport
Attorney at Law

For Respondent: Joseph W. Kegler
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 on the protests of The Weatherhead Company against proposed assessments of additional franchise tax in the amounts of \$2,861.65, \$3,669.35, \$3,131.82, and \$3,895.90 for the income years 1958, 1959, 1960, and 1961, respectively.

The question presented by this appeal is whether appellant and its subsidiary corporations, including The Protane Corporation and its subsidiaries, were engaged in a unitary business, thus requiring that their entire income be combined and allocated within and without the state by a formula method.

Appellant is an Ohio corporation engaged in the manufacture of hydraulic and pneumatic assemblies, valves, couplings, and fuel, brake, and power steering lines, which it sells to automotive, industrial, and aircraft markets; the manufacture of liquefied petroleum gas cylinders which it sells to subsidiary corporations and other customers; and the manufacture of shells and other defense items which it sells to the United States Government. Appellant's headquarters are in Ohio and it has manufacturing plants, warehouses, and sales offices in Ohio, Indiana, and California.

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Appellant has several subsidiary corporations which engage in functions such as supplying appellant with various items used or sold by appellant, providing an outlet for some of the items manufactured by appellant, and manufacturing and selling some of the same types of items that are manufactured and sold by appellant. One of these subsidiaries, LPG Leasing Corporation (hereafter "Leasing"), is a lessor of liquefied petroleum gas cylinders, some of which it purchases from appellant. One of Leasing's lessees, Protane Corporation (hereafter "Protane"), is also a subsidiary of appellant.

During the period in question, Protane, which itself had a number of subsidiaries, was engaged in the sale of liquefied petroleum gas and gas appliances. Appellant owned all of Protane's common stock until July 1961, when it sold 40 percent of the stock. Two of the five directors of Protane were also directors of appellant. One of the two directors was A. J. Weatherhead, Jr., who owned 57 percent of appellant's common stock, and the other was an officer of both corporations. Both corporations also had one other officer in common.

Protane had its principal offices in the same buildings with appellant. The two corporations made joint use of a legal department, a tax department, an insurance department, a mail room, a cafeteria, a central telephone control unit, IBM equipment, and an airplane. For the use of these facilities and services, appellant charged Protane \$200,000 annually, an amount which represented 4 percent of Protane's annual operating expense.

Liquefied petroleum gas was sold by Protane through local service stations which were operated by Protane's subsidiaries in the United States and in other countries. The gas was stored under pressure in cylinders and tanks which were purchased or leased by Protane. Sales of gas were consummated by exchanging full cylinders for empty cylinders or by transferring the gas from trucks into tanks on the customers' premises.

Some of the cylinders used by the Protane group in this country were purchased from appellant, and some were leased from Leasing. Protane's annual purchases from appellant of cylinders used in this country ranged from 4.8 percent to 37.5 percent of Protane's total cylinder purchases and from 8 percent to 13.6 percent of appellant's cylinder sales. The annual rentals paid by Protane to Leasing for cylinders used in this country ranged from 4.9 percent to 35 percent of the total cylinder rentals paid by Protane and constituted from 1.8 percent to 7.3 percent of Leasing's rental income. Protane's foreign subsidiaries also used cylinders purchased from appellant but

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figures reflecting those purchases do not appear in the record. It does appear, however, that those purchases did not exceed the purchases for domestic use.

In its franchise tax returns, appellant reported only its own separate income which it allocated within and without the state by use of the usual formula applied to unitary business income. Respondent determined that all of the affiliated corporations were engaged in a unitary business and applied the allocation formula to the combined income. On this appeal, appellant contends that Protane and its subsidiaries were not part of the concededly unitary business conducted by appellant and its other subsidiaries.

During the years in question, section 25101 of the Revenue and Taxation Code required a taxpayer deriving income from sources both within and without the state to measure its California tax by the net income derived from or attributable to sources within this state. If a business is unitary in nature, the income attributable to California must be determined by a formula composed of property, payroll, sales, or similar factors. (Butler Bros. v. McColgan, 17 Cal. 2d 664 [111 P.2d 334], aff'd, 315 U.S. 501 [86 L. Ed. 991]; Edison California Stores, Inc. v. McColgan, 30 Cal. 2d 472 [183 P.2d 16].)

In recent decisions the California courts have reaffirmed the tests to be used in ascertaining the existence of a unitary business. (Superior Oil Co. v. Franchise Tax Board, 60 Cal. 2d 406 [34 Cal. Rptr. 545, 386 P.2d 33]; Honolulu Oil Corp. v. Franchise Tax Board, 60 Cal. 2d 417 [34 Cal. Rptr. 552, 386 P.2d 40]; RKO Teleradio Pictures, Inc. v. Franchise Tax Board,* 246 Cal. App. 2d _____.) Under one test, a business is unitary in nature if there is unity of ownership, unity of operation, and unity of use. From another approach, a unitary business exists when 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.

We believe that the following integrating links between appellant and Protane establish that they, together with their subsidiaries, were engaged in a unitary business: (1) appellant's ownership of Protane's common stock; (2) the existence of interlocking boards of directors and common officers; (3) the joint use of offices, facilities, equipment, and staff services; and (4) the use by Protane of products manufactured by appellant and products leased by one of appellant's subsidiaries. These integrating links imparted values, savings, and contributions to income that are not adequately reflected by separate accounting based on inter-company charges.

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Although appellant emphasizes that it owned less than 100 percent of Protane's common stock for a portion of the period in question, it retained a controlling interest of 60 percent. We have found that unitary businesses existed in other cases where the stock ownership was less than 100 percent. (Appeal of Dohrmann Commercial Co., Cal. St. Bd. of Equal., Feb. 29, 1956 (75 percent); Appeals of Eljer Co. and Eljer Co. of Calif., Cal. St. Bd. of Equal., Dec. 16, 1958 (over 50 percent). See also, Appeal of Oakland Aircraft Engine Service, Inc. Cal. St. Bd. of Equal., Oct. 5, 1965 (76 percent).) The stock interest retained by appellant was sufficient, in our opinion, to satisfy the unity of ownership requirement.

It is our conclusion, therefore, that respondent's action must be sustained.

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 Weatherhead Company against proposed assessments of additional franchise tax in the amounts of \$2,861.65, \$3,669.35, \$3,131.82, and \$3,895.90 for the income years 1958, 1959, 1960, and 1961, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 24th day of April, 1967, by the State Board of Equalization.

Paul R. Lease, Chairman
John W. Lynch, Member
Bob Kelley, Member
Robert [unclear], Member
_____, Member

Attest: [Signature], Secretary