



BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of )  
BRET HARTE INN, INC., ET AL.     )

For 'Appellants: Theodore P. Lambros  
                  and Donald H. Maffly  
                  Attorneys at Law

For **Respondent:** Crawford H. Thomas  
                          Chief Counsel

**A. Ben Jacobson**  
**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 claims for refund of franchise tax as follows:

<u>Appellants</u>	<u>Income</u> <u>Years Ended</u>	<u>Claims</u> <u>For Refund</u>
Bret Harte Inn, Inc.	11-30-62	\$11,394.98
	6-30-62	5,608.00
	6-30-63	167.00
Camino del Rio Properties, Inc.	12-31-62	24.66
	6-30-64	880.00
Casa Hamilton Corporation	6-30-62	33,473.00
	6-30-63	36,470.00
	6-30-64	5,152.00
El Cortez Motel, Inc.	6-30-62	451.00
	6-30-63	844.00
	6-30-64	924.00

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<u>Appellants</u>	<u>Income Years Ended</u>	<u>Claims For Refund</u>
El Cortez Sky Room	6-30-64	\$ 1,097.00
Georgian-Merritt Corporation	6-30-64	116.00
Hotel Alameda, Inc.	6-30-62	1,772.00
	6-30-63	1,818.00
	6-30-64	1,897.00
Hotel Monarch, Inc.	6-30-62	5,335.00
	6-30-63	3,996.00
	6-30-64	323.00
<b>Stardust</b> Country Club	6-30-62	276.00
	6-30-63	490.00
	6-30-64	208.00

The above appellants and Handlery Hotels, Inc., are California companies and during the years in question they had common officers and directors and over 50 percent of each corporation's stock was owned or controlled by Harry and Rose Handlery. Most of these companies, and Mr. and Mrs. Handlery individually, operated hotel properties which were located in California. Several of the corporations, including those not operating the above hotels, conducted related California activities which contributed to the hotel business. All of the above operations were centrally directed from executive offices located in San Francisco. Such direction included control of purchasing, advertising, and maintenance, and the acquisition of group insurance plans. All of the income of this hotel business was derived from sources located within California.

The Handlerys and each of the corporations filed separate tax returns for the years in question. Subsequently these companies and individuals decided that they constituted a unitary business and therefore were required to file a combined report which consolidated their respective net incomes and losses. Use of a combined report to recalculate these taxpayers' liabilities would result in refunds for some, and additional liabilities for others, for each of the years at issue. The parties to this appeal have agreed that these refund and additional liability amounts, when combined and adjusted for the income years ended June 30, 1962, 1963 and 1964, yield total net refund amounts of \$5,758, \$18,095 and \$6,399, respectively.

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The Franchise Tax Board has stipulated that if the corporations' hotel business income had been derived from sources located both within and without California, then that board would have determined that the companies were engaged in a unitary business and therefore were required to use a combined report. Evidently respondent has further stipulated that if the hotels operated by Harry and Rose Handlery individually had instead been operated by a corporation whose stock was owned by these two persons, then the corporation would have been included in the above unitary business. However, since the facts upon which these stipulations are based did not occur in the instant situation, the Franchise Tax Board determined that a combined report should not be used, and consequently **denied** the claims for refund.

The primary issue presented by this appeal is whether the appellant corporations and Handlery Hotels, Inc., were required or authorized to file a combined report which consolidated their net **incomes** and losses, even though all of the corporations' hotel business income was derived solely from California sources. If it is determined that use of such a report is appropriate, then **this** board must decide whether the net income or loss from the hotels operated by Mr. and Mrs. Handlery should be included in the combined report.

We considered an issue identical to the primary issue, above, in the recent Appeals of Pacific Coast Properties, Inc., et al., Cal. St. Bd. of Equal., decided November 20, 1968. Appellants' representative appeared as amicus curiae in the Pacific Coast case, and presented the specific contentions which appellants now rely upon in the instant situation. In accordance with the requests of the parties, the briefs submitted in the Pacific Coast appeals have been incorporated as part of the record of this case.

In the Appeals of Pacific Coast Properties, Inc., et al., supra, we upheld the Franchise Tax Board's determination that the affiliated corporations, which derived their income solely from California sources, must file separate returns rather than a combined report which consolidated their respective net incomes and losses. We think that the reasoning of our decision in the Pacific Coast case applies equally to the instant situation. Therefore the Franchise Tax Board's position **with** respect to the primary issue must be sustained. In view of this decision, it is not necessary to consider the **second** issue of this appeal.

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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 for refund of franchise tax, be and the same is hereby sustained.

Done at Sacramento, California, this 18th day of February, 1970, by the State Board of Equalization.

John W. Lynch, Member  
Dennis R. Lodge, Member  
Robert D. Keri, Member  
Walter H. Perry, Chairman

ATTEST:

[Signature], Secretary