



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of Appeal of)
)
HOLLOWAY INVESTMENT COMPANY)
)

ORDER DENYING PETITION FOR REHEARING
AND MODIFYING OPINION

Upon consideration of the petition filed September 19, 1983, by the Franchise Tax Board for rehearing of the appeal of Holloway Investment Company, we are of the opinion that none of the grounds set forth in the petition constitute cause **for** the granting thereof and, accordingly, **it** is hereby ordered that the petition be and the same is hereby denied and that our order of August 17, 1983, be and the same is hereby affirmed.

Good cause appearing therefore, it is also hereby ordered that our opinion **of** August 17, 1983, be and the same is hereby modified as follows:

The last paragraph on page three of the opinion commencing with "Before it becomes necessary..." and ending on page four of the opinion with the citation "(Cal. Admin. Code, tit. 18, reg. 25120, subd. (a) (art. **2.5**)) (Emphasis added.)" is deleted in its entirety and replaced with:

Before it becomes necessary to consider whether the gains in question constitute business or nonbusiness income, however, **we must be able** to conclude that appellant is **engaged** in a unitary business. This is not to say that the activities generating the gains in question must be part of appellant's unitary business (see Appeal of Standard Oil of California, Cal. St. Bd. of Equal., Mar. 2, 1983), merely **that there** must be an

underlying unitary business before the question arises. Unless a unitary business exists there is no need for the "business income" "nonbusiness income" dichotomy; the income in question would merely be assigned to the appropriate taxing jurisdiction in accordance with accepted sourcing principles. Therefore, the threshold inquiry in this appeal is whether appellant is engaged in a unitary business.

Done at Sacramento, California, this 13th day of December, 1983, by the State Board of Equalization with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg and Mr. Nevins present.

<u>William M. Bennett</u>	-	-	, Chairman
<u>Conway H. Collis</u>	-	-	, Member
<u>Ernest J. Dronenburg, Jr.</u>	-	-	, Member
<u>Richard Nevins</u>	-	-	, Member
<u> </u>	-	-	, Member