



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the **Matter** of the Appeal of)
)
TAYLOR TOPPER, INC.,)

For Appellant: Philip Frucht
Certified Public Accountant

For Respondent: James C. Stewart
Counsel

O P I N I O N

This appeal is made pursuant to section 26075, subdivision (a), of the Revenue and Taxation **Code** from the action of the Franchise Tax Board in denying the claims of Taylor Topper, Inc., for refund of franchise tax in the amounts of \$478 and \$3,555 for the income years ended October 31, 1976, and October 31, 1977, respectively.

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The sole question presented by this appeal is whether unity of ownership existed between appellant and Taylor Topper of California, Inc. (Taylor-California), entitling the two corporations to file a combined report.

Appellant was a manufacturing corporation, and Taylor-California apparently sold the goods which appellant produced. During the years on appeal, the stock of the two corporations was owned by Glen H. and Dora M. Taylor and their three sons as follows:

	<u>Appellant</u>	<u>Taylor-California</u>
Glen H. & Dora M. Taylor	39.4%	29%
Paul Taylor	10.2%	20%
Glen A. Taylor	25.2%	25.5%
Gregory Taylor	25.2%	25.5%

Appellant and Taylor-California originally filed separate franchise tax returns for the income years ended in 1976 and 1977. Later, appellant filed amended returns for those years using combined reporting procedures and requested refunds. The refunds were issued without an audit.

During a subsequent audit of appellant's returns for its 1976 and 1977 income years, respondent determined that unity of ownership did not exist between appellant and Taylor-California and, therefore, disallowed use of combined reports. Proposed assessments were issued reflecting the disallowance. Appellant paid the assessments and filed claims for refund, from the denial of which appellant now appeals.

Taxpayers deriving income from sources within and outside this state must measure their California franchise tax liability by their net income derived from or attributable to sources within California. (Rev. & Tax. Code, § 25101.) If a taxpayer is engaged in a single unitary business with affiliated corporations, its income attributable to California sources is determined by applying an apportionment formula to the total income derived from the combined unitary operations of the affiliated corporations. (Edison California Stores, Inc. v. McColgan, 30 Cal.2d 472 [183 P.2d 16] (1947).) Where more than one corporation is involved, unity of ownership is a prerequisite to the existence of a single unitary business. (Edison California Stores, Inc. v. McColgan, supra.)

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We have characterized unity of ownership as controlling ownership over all parts of the business and stated that, generally, "controlling ownership can only be established by common ownership, directly or indirectly, of more than 50 percent of a corporation's voting stock." (Appeal of Revere Copper and Brass Incorporated, Cal. St. Bd. of qual., July 26, 1977.)

Respondent contends that a single entity or individual must own more than 50 percent of the voting stock of each corporation for unity of ownership to exist. Appellant argues that more than 50 percent ownership by a single family is sufficient to **establish** unity of ownership. Appellant relies on our decision in the Appeal of Shaffer Rentals, Inc., decided September 14, 1970, and the **provisions** of Revenue and Taxation Code sections 25705 and 24497. For the reasons stated **below**, we must disagree with appellant's position.

Appellant's citation of Revenue **and** Taxation Code section 25105 in support of its position is **not** elaborated on and we **do not** believe that it provides any **authority helpful** to appellant.. Revenue and Taxation Code section 25105 states: "Direct or indirect ownership or control of more than 50 percent of the voting stock of the taxpayer shall constitute ownership or control for the purposes of this article." That section's relevance to questions involving a unitary business is not clear (see fn. 3 of Revere Copper and Brass Incorporated, supra), and, **in any case, section 25105 does not in any way address the question of whether one or more than one entity must hold more than 50 percent of the stock to constitute ownership or control.**

Appellant's reliance on Revenue and Taxation Code section 24497 is similarly misplaced. That section provides that **stock** owned by certain family members shall be considered constructively owned by one individual, but only "[f]or purposes of those provisions of [chapter 8 of the Bank and Corporation Tax Law] to which the rules contained in this section are expressly made applicable" The sections dealing with the determination of franchise tax liability for unitary businesses are found in chapter 17, rather than chapter 8, and none of those **sections** expressly **make** section 24437 applicable.

In the Appeal of Douglas Furniture of California, Inc., decided this day, we **overruled** our **decision** in Shaffer Rentals, supra, upon which appellant relies. We **also held** that for unity of ownership to exist, controlling ownership

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of all involved corporations must be held by one individual or entity. In the present appeal, although all the voting **stock** in both corporations was owned by the same family members, no one individual held controlling **ownership**. Applying the standard set in the Appeal of Douglas Furniture of California, Inc., supra, we must **conclude that unity of ownership did not** exist between appellant **and Taylor-California**. Respondent's action, therefore, must be sustained.

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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 of Taylor Topper, Inc., for refund of franchise tax in the amounts of \$478 and \$3,559 for the income years ended October 31, 1976, and October 31, 1977, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 31st day of January, 1984, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. **Dronenburg**, Mr. **Collis**, Mr. Bennett and Mr. Harvey present.

Richard Nevins , Chairman
Ernest J. Dronenburg, Jr. , Member
Conway H. Collis , Member
William M. Bennett , Member
Walter Harvey* , Member

*For Kenneth Cory, per **Government** Code section 7.9

