BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)
)
B.K.I. MANAGEMENT CO., INC.,)
B.K.I.-1, INC., and B.K.I.-2, INC.)

For Appellants: Randolph J. Agley, Secretary
B.K.I. Management Co., Inc.

For Respondent: Kendall E. Kinyon
Supervising Counsel

O P I N IO N

These appeals are made pursuant to section 25666 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of B.K.I. Management Co., Inc., B.K.I.-1, Inc., and B.K.I.-2, Inc., against proposed assessments of additional franchise tax in the amounts and for the years as follows:

Appeals of B.K.I. Management Co., Inc., et al.

Taxpayer	Income Year	Proposed Assessment
B.K.I. Management Co., Inc.	1976	$ 141.93
B.R.I.-1, Inc.	1975	51.47
	1976	2,245.91
B.K.I.-2, Inc.	1976	404.30

The sole question presented by these appeals is whether unity of ownership existed among the appellant corporations in the B.K.I. group.

Appellants are members of a group of ten corporations, nine of which operate Burger King restaurants in California. The tenth, B.K.I. Management Co., Inc. (Management), operates in Michigan and acts as the service company for the other nine corporations, providing accounting, financial, management, and labor services.

All ten companies are owned by the same five individuals, all in the same proportions. One shareholder owns 50 percent of each corporation, and each of the other four shareholders owns 12.5 percent of each corporation. The five shareholders serve as officers of all the corporations, each holding the same office in all corporations. Shareholder loans totaling $1.2 million were made in the same proportion as the stockholdings.

For the 1975 and 1976 income years, appellants and the other seven affiliated corporations used combined report procedures to determine their California income. Because no one individual or entity owned more than 50 percent of the corporations, respondent determined that a combined report was improper and redetermined the California tax liabilities of the corporations using separate accounting. Only the three appellant corporations were subject to tax in excess of the minimum tax, the rest having operated at a loss.

Taxpayers deriving income from sources both within and outside of California must measure their California franchise tax liability by their net income derived from or attributable to sources within this state. (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.)

We stated a general standard for unity of ownership in the Appeal of Revere Copper and Brass Incorporated, decided by this board on July 26, 1977:

> The ownership requirement contemplates an element of controlling ownership over all parts of the business; the lack of controlling ownership standing alone requires separate treatment regardless of how closely. the business activities are otherwise integrated. ... Generally speaking, controlling ownership can only be established by common ownership, directly or indirectly, of more than 50 percent of a corporation's voting stock.

Respondent argues that a single individual or entity must own more than 50 percent of the voting stock of each corporation for unity of ownership to exist. Appellants contend that unity of ownership is present because the corporations involved meet the test of Revenue and Taxation Code section 25102, which allows the Franchise Tax Board to permit or require a combined report where two or more corporations are "owned or controlled directly or indirectly by the same interests ...." Appellant? base their argument on our decision in the Appeal of Shaffer Rentals, Inc., decided September 14, 1970.

In the Appeal of Douglas Furniture of California, Inc., decided January 31, 1984, we rejected essentially the same argument based on section 25102 as that made here by appellants. We also specifically overruled the Shaffer Rentals decision and set a "bright-line" test for unity of ownership. We held that unity of ownership does not exist unless controlling ownership of all involved corporations is held by one individual or entity.

In the instant appeals, no one entity or individual held controlling ownership in any of the corporations involved. Therefore, unity of ownership did not exist and appellants were not entitled to file a combined report. Respondent's action, therefore, must be sustained.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in these proceedings, 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 B.K.I. Management Co., Inc., B.K.I.-1, Inc., and B.K.I.-2, Inc., against proposed assessments of additional franchise tax in the amounts and for the years as follows:

Taxpayer	Income Year	Proposed Assessment
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	1976	2,245.91
B.K.I.-2, Inc.	1976	404.30

be and the same is hereby sustained.

Done at Sacramento, California, this 5th day of April, 1984, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Dronenburg, Mr. Bennett and Mr. Harvey present;

Richard Nevins, Chairman

Ernest J. Dronenburg, Jr., Member

William M. Bennett, Member

Walter Harvey*, Member

_____, Member

*For Kenneth Cory, per Government Code section 7.9