

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
NEVIS INDUSTRIES, INC.) No. **84A-663**

For Appellant: **J. D. Fowler**
Certified Public Accountant

For Respondent: David Lew
Counsel

O P I N I O N

This appeal is made pursuant to section **25666^{1/}** of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of **Nevis** Industries, Inc., against a proposed assessment of additional franchise tax in the amount of \$27,322 for the income year ended September 30, 1980.

1/ Unless otherwise specified, all **section references** **are** to sections of the Revenue and Taxation Code as in effect for the income year in issue.

Appeal of Nevis Industries, Inc.

The sole question presented by this appeal is whether unity of ownership existed **between** appellant and its various affiliates.

Appellant, a Nevada corporation with its principal office in Yuba City, California, and its eight affiliates are primarily involved in farming and land farming development within and without California. Ownership of appellant is shared equally (**i.e., 50** percent each) by two adult brothers, Thomas Nevis and Samuel Nevis. In addition, each brother has an equal ownership interest in each affiliate as follows:

<u>Corporate Name</u>	<u>Ownership Percentage</u>	
	<u>Thomas Nevis</u>	<u>Samuel Nevis</u>
Adams Esquon Ranch, Inc.	50.0%	50.0%
Artic Coast Fisheries	50.0%	50.0%
CAL-BAR, Inc.	25.5%	25.5%
CAL-VAL Farms, Inc.	32.5%	32.5%
Columbia Farms, Inc.	50.0%	50.0%
Farm and Sea of Alaska, Inc.	37.5%	37.5%
Red Rock Estates, Inc.	25.0%	25.0%
Sutter Tomato Products, Inc.	50.0%	50.0%

For the year at issue, **appellant** and the eight affiliated corporations used combined report procedures to determine their California income. Because no one individual **or** entity owned more than 50 percent of appellant, respondent denied the use of combined reporting and redetermined the California tax liabilities of the corporations using separate accounting. Denial of appellant's protest led to this appeal.

Taxpayers deriving income from sources both within and without 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

Appeal of Nevis Industries, Inc.

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 brothers ~~met~~^{2/} the test of constructive ownership of section 24429.

Respondent's finding with respect to unity is presumptively correct and appellant bears the burden of proving it incorrect. (Appeal of The Amwalt Group, Inc., etc., Cal.St. Bd. of Equal., July 28, 1983.)

The direct answer to appellant's argument is that section 24429 has no application in determining whether the controlling ownership test is met for purposes of filing a combined report. Section 24429 is expressly intended to apply to section 24428 which, in turn, is expressly intended to apply to section 24427 which applies only to loss deductions for sales or exchanges of property

2/ Section 24429 provides in relevant part as follows:

(b) An individual shall be considered as owning the stock owned directly or indirectly, by **or** for his family:

* * *

(d) The family of an individual shall include . . . his brothers . . .

Appeal of Nevis Industries, Inc.

between related parties. Clearly, appellant's reliance upon section 24429 in this appeal is misplaced.

Moreover, in essentially the same factual situation, we held that unity of ownership does not exist unless controlling ownership of all involved corporations is held by one individual or entity. (Appeal of Douglas Furniture of California, Inc., Cal. St. Bd. of Equal., Jan. 31, 1984; see also Appeal of Taylor Topper, Inc., Cal. St. Bd. of Equal., Jan. 31, 1984; Appeals of B. K. I. Management Co., Inc., et al., Cal. St. Bd. of Equal., Apr. 5, 1984; Appeal of P and M Lumber Products, Inc., Cal. St. Bd. of Equal., June 27, 1984; Appeals of Rain Bird Sprinkler Mfg. Corp., et al., Cal. St. Bd. of Equal., June 27, 1984.)

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

Appeal of Nevis Industries, Inc.

ORDER

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 protest of Nevis Industries, Inc., against a proposed assessment of additional franchise tax in the amount of \$27,322 for the **income year** ended September 30, 1980, be and the same is hereby sustained.

Done at Sacramento, California, this 10th day of September, 1985, by the State Board of Equalization, with Board **Members** Mr. Dronenburg, Mr. Nevins and Mr. Harvey present.

<u>Ernest J. Dronenburg, Jr.</u>	, Chairman
<u>Richard Nevins</u>	, Member
<u>Walter Harvey*</u>	, Member
<u> </u>	, Member
<u> </u>	Member

*For Kenneth Cory, per Government Code section 7.9