

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In **the** Matter of the Appeals of)
WHITEY RESEARCH TOOL COMPANY, ET AL.)

Appearances:

For Appellants: Ernie **Mansour**
 Attorney at Law

For Respondent: Brian W. **Toman**
 Counsel

O P I N I O N

These appeals are made pursuant to section 25667 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the protests against proposed assessments of additional franchise tax in the amounts and for the years as follows:

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<u>Appellant</u>	<u>Income Year Ended</u>	<u>Proposed Assessment</u>
Whitey Research	1967	\$ 7,155.01
Tool Company	1968	6,986.07
	1969	11,579.07
	1970	3,109.50
	1971	7,175.87
	1972	10,250.82
	1973	8,092.77
Endicott Company	March 31, 1968	4,793.54
	March 31, 1969	2,288.77
	March 31, 1970	1,417.71
Western Swagelok	June 30, 1969	246.39
Company	June 30, 1970	246.39
	June 30, 1970	2,721.50
	June 30, 1971	4,798.13
	June 30, 1972	7,402.80
	June 30, 1973	1,816.85

After the oral-hearing in this matter, respondent conceded that **errors** had **been** made in computing appellants' 'payroll **factors**'. Respondent has informed us that correcting these 'errors **will** reduce the proposed assessments by 'the total amount of **\$1,422.21**.

Appellant Whitey Research Tool Company (Whitey) is a California manufacturing corporation. Appellants Endicott Company (**Endicott**) and Western Swagelok Company (**Western**), also California companies, are distributors and **warehouse**s of **Whitey's** products.

For the years in question respondent determined that **appellants** were engaged in a unitary business with 13 other corporations. Six of the other corporations, like Whitey, manufacture valves, **compressors**, fittings and pipes. Four of: **the others**, like Endicott and **Western**, act as regional distributors and warehouse of these products; **One** company performs **marketing** and advertising **services** for the subject corporations; and another is a holding company which leases real property to Whitey. The remaining corporation makes supplies used exclusively by one of the manufacturing companies;

During the appeal years there 'were **substantial** **product** sales between and among the subject corporations, all **apparently** conducted as **arm's-length** transactions; In the later years there was also extensive intercompany financing for which notes were issued and **interest** was paid at the prevailing market rate. All the subject corporations used the same law and accounting firms.

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Most of the stock in the subject corporations is owned by Fred **Lennon**, his wife, Alice **Lennon**, and their daughter, C. L. Ryan. Mr. **Lennon** directly holds 50 percent or more of the stock in 13 of the companies. In two of the remaining companies, Mr. **Lennon** and his wife or daughter together own more than 50 percent of the stock. The stock in the other corporation is owned primarily by Mr. **Lennon's** sons and grandsons. Mr. **Lennon**, his wife, and two other individuals form a majority on the board of directors of each corporation. These four and one other individual also form a majority of the officers of each company except Western.

Appellants appear to concede that the subject corporations were unitary under the principles established by the California Supreme Court in Butler Brothers v. McColgan, 17 Cal. 2d 664 [111 P. 2d 334] (1941), affd. 315 U.S. 501 [86 L. Ed. 9911] (1942), and Edison California Stores v. McColgan, 30 Cal. 2d 472 [183 P.2d 16] (1947). **At least** their representatives did not bother to argue this point on brief or at the oral hearing in this matter. They contend instead that application of the unitary method in this case is unconstitutional because it places an undue burden on interstate commerce, ignores the separate existence of the various corporations, and results in double taxation.

It is the policy of this board to abstain from deciding constitutional questions in proposed assessment cases. (Appeal of Maryland Cup Corp., Cal. St. Bd. of Equal., March 23, 1970.) This policy is based upon the absence of any specific statutory authority authorizing respondent to obtain judicial review of our decisions in these types of cases, and our belief that such review should be available for questions of constitutional importance. In any event, all the constitutional objections raised by appellants were long ago settled adversely to their position. (See Underwood Typewriter Co. v. Chamberlain, 254 U.S. 113 [65 L. Ed. 165] (1920); Matson Nav. Co. v. State Board of Equalization, 297 U.S. 441 [80 L. Ed. 791] (1936); Edison California Stores v. McColgan, supra.)

Appellants also claim that the property factor used in apportioning their business income erroneously included some property twice. Respondent has submitted documentary evidence showing that there was no such double inclusion. We accordingly find no error in the property factor.

For the above reasons, we sustain respondent's action in this matter.

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O R D E R


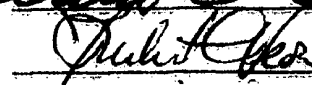


Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 25667 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the protests against proposed assessments of additional franchise tax in the amounts and for the years as follows:

<u>Appellant</u>	<u>Income Year Ended</u>	<u>Proposed Assessment</u>
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and the same is hereby modified in accordance with respondent's concession regarding the payroll factor. In all other respects the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 16th day of August, 1977, by the State Board of Equalization.

 Chairman
 , Member
 , Member
 , Member
_____, Member