

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
MARKETING MANAGEMENT, INC.) No. 81A-1315-MW

For Appellant: Kenneth M. Carnathan
Certified Public Accountant

For Respondent: Patricia I. Hart
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 Marketing Management, Inc., against proposed assessments of additional franchise tax in the amounts of \$1,540.69, \$1,857.87, and \$2,252.84 for the income years ended September 30, 1977, September 30, 1978, and September 30, 1979, respectively.

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

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The sole question presented by this appeal is whether appellant, its parent corporation, and the parent's other subsidiaries were engaged in a single unitary business during the 1977, 1978, and 1979 income years.

Appellant is a wholly owned subsidiary of the **MMI Group, Inc. (MMI)**. **MMI** is also the 100-percent owner of M. M. Administrators, Inc. (Administrators), Management Safety, Inc. (Safety), and Marketing Management Life Corporation (MM Life). **All of MMI's** subsidiaries provided insurance services. Appellant sold property and casualty insurance through an office in California, Administrators provided life and health insurance underwriting, Safety provided safety engineering services and risk management information, and MM Life provided life insurance underwriting. **MMI** owned most of the operating assets and rented them to its subsidiaries. It also furnished undefined services to the subsidiaries and received expense reimbursements from them.

Management of all the companies was under the control of a single management team which was responsible to **MMI's** board of directors. The management team was responsible for policy making, centralized management, executive personnel, purchasing, sales, advertising, accounting, and financing. All the companies use the same mailing address in Alabama, that of MMI.

For the years in issue, appellant filed its California tax return reporting only its own income. Respondent determined that appellant, MMI, and the three other affiliates were engaged in a single unitary business and recomputed appellant's income using a combined report which included all of those companies.

When a taxpayer **derives income** from sources both within and without this state, its franchise tax liability is measured by its net income derived from or attributable to sources within this state. (Rev. & Tax. Code, § 25101.) If the taxpayer is engaged in a single unitary business with affiliated corporations, the income attributable to California sources must be determined by applying an apportionment formula to the total income derived from the combined unitary operations of the affiliated companies. (Edison California Stores, Inc. v. McColgan, 30 Cal.2d 472 [183 P.2d 16] (1947).)

The existence of a unitary business may be established under either of two tests set forth by the

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California Supreme Court. In Butler Bros. v. McColgan, 17 Cal.2d 664 [111 P.2d 334] (1941); affd., 315 U.S. 501 [86 L.Ed. 991] (1942), the court held that a unitary business was definitely established by the presence of unity of ownership, unity of operation as evidenced by central purchasing, advertising, accounting, and management divisions, and unity of use in a centralized executive force and general system of operation. Later, the court stated that a business is unitary if the operation of the portion of the business done within California is dependent upon or contributes to the operation of the business outside California. (Edison California Stores, Inc. v. McColgan, supra, 30 Cal.2d at 481.)

Respondent's determination is presumptively correct and appellant bears the burden of proving that it is incorrect. (Appeal of John Deere Plow Company of Moline, Cal. St. Bd. of Equal., Dec. 13, 1961.) Where, as here, the appellant is contesting respondent's determination of unity, it must prove by a preponderance of the evidence that, in the aggregate, the unitary connections relied on by respondent were so lacking in substance as to compel the conclusion that a single **integrated** economic enterprise **did** not exist.

Unity of ownership is clearly present since MMI owned 100 percent of **all** the other corporations. We also find that contribution and dependency existed among these corporations. The most significant factor is the single management team which provided all of the ordinary and extraordinary management services for all of the affiliates. This total integration of management, in the context of an affiliated group engaged in the same or similar type of business, 'creates an unavoidable inference of a mutually beneficial exchange of information and know-how. (Appeal of Credit Bureau Central, Inc., Cal. St. Bd. of Equal., Feb. 2, 1981.) This type of beneficial exchange is highly indicative of contribution and dependency among these affiliates. An additional indication of contribution and dependency is **MMI's** provision of most of the operating assets for the subsidiaries.

The unsupported assertions and conclusions presented by appellant are insufficient to carry its burden of **proof**. (New Home Sewing Machine Company, Inc., Cal. St. Bd. of Equal., Aug. 17, 1982.) Appellant has produced no facts; nor cited any authority, which might cast any doubt on our conclusion that these companies were engaged in a single unitary business. Therefore, we must sustain the action of the Franchise Tax Board.

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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 on the protest of Marketing Management, Inc., against proposed assessments of additional franchise tax in the amounts of **\$1,540.69, \$1,857.87, and \$2,252.84** for the income years ended September 30, 1977, September 30, 1978, and September 30, 1979, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this. 4th day of February , 1986, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Collis, Mr. Bennett, Mr. Dronenburg and Mr. Harvey present.

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

*For Kenneth Cory, per Government Code section 7.9