

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
WESTLAKE PETROLEUM, INC.) No. **83A-1237-KP**

For Appellant: Peter C. Spratt
Attorney at Law

For Respondent: Anna Jovanovich
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 **Westlake** Petroleum, Inc., against proposed assessments of additional franchise tax in the amounts of \$9,627, \$7,179, and \$10,952 for the income years ended June **30**, 1979, June **30**, 1980, and June **30**, 1981, 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 issue on appeal is whether respondent correctly determined that interest income received by appellant was business income subject to apportionment.

During the income years at issue, appellant, a corporation domiciled in the State of Washington, was engaged in the petroleum product resale business throughout the Western United States. Although appellant's primary source of income was the sale of petroleum products, it also received interest income from both long- and short-term investments. During the appeal years, **appellant** filed its California returns on a unitary basis but characterized all of the interest income it received as nonbusiness income specifically allocable to its commercial domicile in Washington. Upon review of the returns, respondent determined that the interest income from the above-described investments was business income subject to apportionment. The appropriate assessments were issued, appellant's subsequent protest was denied, and this appeal followed.

The issue on appeal is governed by the Uniform Division of Income for Tax Purposes Act (UDITPA) contained in sections 25120-25139. Section 25120 defines "business income" and "nonbusiness income" as follows:

(a) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

* * *

(d) "Nonbusiness income" means all income other than business income.

Respondent's determination as to the character of income to a business is presumed correct and it is the burden of the taxpayer to prove error in that determination. (Appeal of Johns-Manville Sales Corporation, Cal. St. Bd. of Equal., Aug. 17, 1983.) An unsupported statement by a taxpayer that the transaction or activity which **gave** rise to the income did not arise in the regular course of the taxpayer's trade or business or that it did not acquire, manage, and dispose of an intangible in a manner that made it an integral part of **its unitary**

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operation is insufficient to satisfy its burden of proof. (See Appeal of Joy World Corporation, Cal. St. Bd. of Equal., June 29, 1982.)

While appellant detailed some of the sources of its acknowledged business income, the only evidence presented to support its claim to any nonbusiness income was the statement that: "**[i]ncluded** as non-business income is interest income which is earned on certain monies which are invested in Washington, such monies not being a part of the unitary business of the taxpayer." (App. Br. at 3.) Appellant apparently reaches this conclusion by a common pre-UDITPA argument that since appellant was in the petroleum business, it was not in the investment business. Since appellant was not in the investment business, it argues that all income from investments was nonbusiness income **specifically** allocable to appellant's commercial domicile in the State of Washington. Since the enactment of UDITPA, this line of reasoning has been specifically rejected by this board. (See Appeal of Standard Oil Company of California, Cal. St. Bd. of Equal., Mar. 2, 1983.)

The crucial inquiry in an appeal such as this is not whether appellant was in the business of investing but whether the investments in question were integrally related to appellant's trade or business. (Appeal of Standard Oil Company of California, supra.) In order for us to answer that question, evidence demonstrating the relationship, or lack thereof, between the investments and the unitary business **must be** presented. Here, there is no explanation as to the nature of appellant's **investments nor** is there a factual explanation as to why these particular investments were unrelated to appellant's unitary business activities. Without such evidence, appellant's statement simply presents a conclusion to the ultimate legal inquiry. Such a conclusion without supporting evidence is insufficient to satisfy appellant's burden of proving that the purchase of the notes did not occur in the regular course of appellant's trade or business or that appellant acquired, managed, and disposed of the intangibles in a manner that separated them from the integral operation of appellant's unitary business. (See Appeal of Johns-Manville Sales Corporation, supra.)

As the record lacks probative evidence to support its position, appellant has failed to satisfy its burden of proof and we are unable to find that respondent's determination was incorrect. (Appeal of Johns-Manville

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Sales Corporation, supra.) Accordingly, respondent's action in this matter 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 25667 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of **Westlake** Petroleum, Inc., against proposed assessments of additional franchise tax in the amounts of \$9,627, \$7,179, and \$10,952 for the income years ended June 30, 1979, June 30, 1980, and June 30, 1981, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 10th day of June , 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
Waler Harvey* , Member

*For Kenneth Cory, per Government Code section 7.9