

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA



In the Matter of the Appeal of
BOSTITCH-WESTERN, INC.

Appearances:

For Appellant : Frank Mergenthaler, Attorney at Law;
Ernst & Ernst, Accountants and Auditor

For Respondent : W. M. Walsh, Assistant Franchise Tax
Commissioner; Milton Huot, Assistant
Tax Counsel

O P I N I O N

This appeal is made pursuant to Section 250 of the Bank and Corporation Franchise Tax Act (Chapter 13, Statutes of 1929, as amended) from the action of the Franchise Tax Commissioner on the protest of Bostitch-Western, Inc., to a proposed assessment of additional tax in the amount of \$1,097.67 for the taxable year ended December 31, 1941.

The Appellant's operations during the year in question were conducted in the same manner as during the preceding year, its franchise tax liability for that prior year having been considered by us in an appeal determined on November 14, 1944. In that appeal we described those operations and the basis of the Commissioner's action as follows:

"Appellant, a Rhode Island corporation, is engaged in the business of distributing stapling products and other office supplies and equipment, its operations being conducted entirely within the State of California. Throughout the period under consideration 72% of its capital stock was owned by the Rhode Island Hospital Trust Company, trustee under the will of Thomas A. Briggs, Providence, Rhode Island, which also owned a controlling interest, varying from 55% to 90%, of the capital stock of each of the following corporations:

"Boston Wire Stitcher Company
Eostitch, Inc.
Bostitch-Boston, Inc.
Bostitch-Chicago, Inc.
Bostitch-New York, Inc.
Bostitch-Northwest, Inc.
Bostitch-St. Louis, Inc.
Bostitch-Canada, Ltd.

Appeal of Bostitch-Western, Inc.

"Aside from the general management control existing by reason of stock ownership, Appellant's business is operated independently of that of the affiliated corporations, Appellant purchases stapling products and other office supplies from Bostitch, Inc., its sales of that merchandise constituting about 90% of its business and the remainder being sales of products purchased from unaffiliated vendors. The basis of pricing sales of Bostitch, Inc., to Appellant is exactly the same as the basis of pricing those to other purchasers, such purchasers including approximately 56 distributors not affiliated with the Bostitch group. Prior to 1936 Appellant's business was operated under individual ownership without any connection with the Bostitch group, except, of course, the purchase of Bostitch products. The basis of pricing sales to the individual proprietorship was exactly the same as that used for sales to Appellant after it took over the business. No services are rendered by Appellant to other members of the Bostitch group. No services are rendered to Appellant by the other members except for certain advertising benefits and general advisory services rendered without cost to it. There are no inter-company charges between Appellant and those members, other than, as above stated, for merchandise.

"The action of the Commissioner is based on the conclusion that he was authorized, under Section 14 of the Act, to obtain the combined net income of Appellant and its affiliated corporations and then to allocate to California through an allocation formula based on the three factors of sales, payroll, and property the portion of that income representing Appellant's net income from sources within this State."

We rejected the Commissioner's position in that appeal upon the ground that his action was not warranted by Section 14 of the Act. Since the date of our decision in that matter, however, the California Supreme Court has determined that the Commissioner is authorized under Sections 10 and 12 of the Act to ascertain the California income of a corporation doing business in this State by combining its income with that of affiliates with which it is engaged in a unitary business within and without the State and allocating to California a portion of the aggregate income when, in his opinion, such action is necessary to determine the true net income attributable to business done in this State by the corporation. Edison California Stores v. McColgan, 30 Cal. 2d 472. The Court concluded therein that it was incumbent upon the taxpayer to produce evidence to meet the burden resting upon it of establishing affirmatively that the formula method applied by the Commissioner produced an arbitrary and unreasonable result and that this burden is not met by reliance upon the accuracy and reasonableness of separate accounting or the reasonableness of its book entries.

Appeal of Bostitch-Western, Inc.

The Appellant did not make an appearance before us at the time set for the hearings of the instant appeal. We are, accordingly, without evidence, as required by the Edison California Stores decision, that the percentage of the entire net income apportioned to this State by the Commissioner through the allocation formula bore no reasonable relation to Appellant's business in California. The action of the Commissioner, accordingly, must be sustained.

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 25 of the Bank and Corporation Franchise Tax Act, that the action of Chas. J. McColgan, Franchise Tax Commissioner, on the protest of Bostitch-Western, Inc. to a proposed assessment of additional tax in the amount of \$1,097.67 for the taxable year ended December 31, 1941, be and the same is hereby sustained.

Done at Sacramento, California, this 17th day of November, 1948, by the State Board of Equalization.

Wm. G. Bonelli, Chairman
J. H. Quinn, Member
J. L. Seawell, Member
Geo. R. Reilly, Member

ATTEST: Dixwell L. Pierce, Secretary