



Appeal of Worthington Corporation

Worthington's stock. Annin preferred to "go the stock route" and on January 23, 1959, there was executed an "Agreement for Exchange of Stock between Worthington Corporation and Douglas H. Annin." Pursuant to that agreement, on January 30, 1959, Mr. Annin transferred to Worthington all of his stock in Annin and Worthington issued to him 74,755 shares of its \$10 par value common stock. These shares constituted 4.47 percent of the total outstanding common stock of Worthington. five days thereafter, Douglas Annin disposed of one-third of the Worthington shares which he had received. On May 29, 1959, Annin transferred all of its assets to Worthington and dissolved, The plant and business of Annin was thereafter operated as a division of Worthington,

On February 4, 1960, a franchise tax return for the income year ended May 31, 1959, taxable year ended May 31, 1960, was filed on behalf of Annin. This return reported a net income of \$1,408,043.92. A tax in the amount of \$56,321.76 was paid at the time the return was filed. Subsequently there was paid an additional tax of \$10,164.31 for the same taxable year, plus interest of \$918.91.

Worthington, as successor to Annin, claimed a refund of the tax and interest on the ground that Annin did not operate during the taxable year ended in 1960, Respondent denied the claim, taking the position that Annin dissolved pursuant to a reorganization. If respondent's position is correct, Worthington was liable for the tax and is not entitled to a refund. (Rev. & Tax, Code, Sec. 23253, subd. (b).)

Substantially all of the contentions raised by appellant were answered adversely to its position in the Appeal of Heating Equipment Mfg. Co., Cal. St. Bd. of Equal., Nov. 11, 1960 3 CCH Cal, Tax Cas. Par. 201-636, 2 P-H State & Local Tax Serv. Cal. Par: 13234, and in the Appeals of Diamond Gardner Corp., this day decided. In those cases, transactions not materially different from the one now before us were held to constitute mergers within the meaning of section 23251, subdivision (c) of the Revenue and Taxation Code and, therefore, **reorganizations.**

We stated in those decisions that a requisite of a merger for purposes of the relevant statute is that the stockholder of the transferor retain a proprietary interest in the transferee, and interest which is definite and material and which represents a substantial part of the value of the thing transferred. Based upon the book net worth of Annin and its excellent record of earnings, the Worthington stock which Annin's stockholder received was valued well in excess of a million dollars, Taking into consideration the fact that Annin's stockholder almost immediately disposed of a third of those shares, he still held many thousands of shares worth a million dollars or more. This was beyond doubt a "definite and material" interest and represented a "substantial part of the value of the thing transferred,"

We conclude that the transaction in question was a merger as the term is used in Section 23251, subdivision (c) of the Revenue and Taxation Code,

