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These appeals are made pursuant to sections 25667 and 26077 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Rajaw Realty Company against proposed assessments of additional franchise tax in the amounts of \$544.31, \$1,037.33, and \$1,088.26 for the income years 1961, 1962, and 1963, respectively, and in denying a claim for refund of franchise tax in the amount of \$359.26 for the income year 1963.

The primary issue raised by this appeal is whether appellant had established a commercial domicile in California so that interest income, which it received from several types of intangible property, was derived from a source within this state, and was thus includible in the measure of appellant's California franchise tax. The intangible property, which gave rise to the interest income in question, resulted from Missouri real property transactions of appellant.

Rajaw Realty Company was incorporated in Missouri in 1908. It is engaged in real estate activities in that state and in California where it has qualified to do business. Appellant maintains a staffed office in Missouri.

All of the stock of Rajaw Realty Company is owned by two brothers who are California residents. These shareholders, along with their father, maintain an office in Beverly Hills, California. They travel to Missouri every few weeks in order to supervise appellant's operations in

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that state. Business decisions are not consistently made by the brothers in any one fixed place, but rather are made wherever they happen to be when the problems arise. Their father, also a California resident, advises them concerning the management of appellant.

At the hearing of this matter respondent Franchise Tax Board offered as evidence the 1961, 1962, and 1963 tax returns of appellant. They were signed by the father of the shareholders in his capacity as president of Rajaw Realty Company in 1961 and 1962, and as vice president in 1963. The returns were signed in California and were prepared by a certified public accountant located in this state.

Section 25101 of the Revenue and Taxation Code provides that when a corporation's income is derived from sources both within and without California, the tax shall be measured by the net income derived from or attributable to sources within this state. Section 23040 of the above code states that income derived from or attributable to sources within California includes income from intangible property having a situs in this state.

Corporation-owned intangible property is presumed to have a tax situs in the state of incorporation of its owner. (Newark Fire Ins. Co. v. State Bd. of Tax Appeals, 307 U.S. 313 [83 L. Ed. 1312].) However, this presumption can be overcome if it can be shown that the corporation has established a commercial domicile in another state. In such a case the situs of the intangible property will be in this new state. (Wheeling Steel Corp. v. Fox, 298 U.S. 193 [80 L. Ed. 1143].) A commercial domicile has been described as the center of authority of a corporation, or the actual seat of the corporate government. (Wheeling Steel Corp. v. Fox, supra.) In the California case of Southern Pacific Co. v. McColgan, 68 Cal. App. 2d 48 [156 P.2d 81], the court stated:

The true-test must be to consider all the facts relating to the particular corporation, and all the facts relating to the intangibles in question, and to determine from those facts which state, among all the states involved, gives the greatest protection and benefits to the corporation, which state, among all the states involved, from a factual and realistic standpoint is the domicile of the corporation. That is partially a question of fact and partly a question of law. (68 Cal. App. 2d 48, 80.)

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In the instant situation appellant has received interest income from several types of intangible property. The presumption is that this property has its tax situs in Missouri, appellant's state of incorporation, Respondent has attempted to show that appellant has established a commercial domicile in California and thereby overcome the presumption.

Respondent has shown that appellant's two shareholders and their father, who is an officer of the corporation, are California residents and maintain an office in this state. Also, appellant's California tax returns were prepared and signed in this state. Although this evidence points toward California as the commercial domicile of appellant, there has also been introduced significant evidence to the contrary. The two shareholders travel frequently to Missouri to supervise appellant's operations, Business decisions are not consistently made within California, but rather are made wherever the owners happen to be when the problems arise. A staffed office is maintained in Missouri.

We must conclude that the evidence submitted by respondent is insufficient to establish a commercial domicile in California. Consequently the interest income derived from this property had its source in Missouri and therefore it is not subject to California franchise tax.


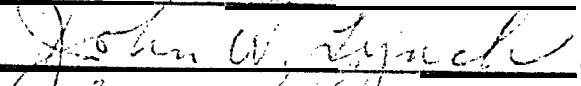
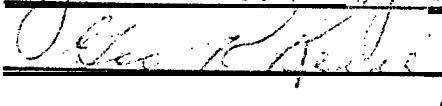
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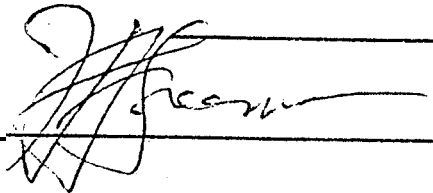
Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause' appearing therefor,

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to sections 25667 and 26077 of the Revenue and Taxation Code that the action of the Franchise Tax Board on the protest of Rajaw Realty Company against proposed assessments of additional franchise tax in the amounts of \$544.31, \$1,037.33, and \$1,088.26 for the income years 1961, 1962, and 1963, respectively, and in denying a claim for refund of franchise tax in the amount of \$359.26 for the income year 1963, be and the same is hereby reversed.

Done at Sacramento, California, this 6th day of June, 1968, by the State Board of Equalization.


_____, Chairman

_____, Member

_____, Member
_____, Member
_____, Member

ATTEST: 
_____, Secretary