

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
DASIBI ENVIRONMENTAL) No. 84A-999-MW
CORPORATION)

Appearances:

For Appellant: Allan Bloom
Attorney at Law

For Respondent: Israel Rogers
Supervising 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 Dasibi Environmental Corporation against a proposed assessment of additional franchise tax in the amount of \$7,741 for the income year ended June 30, 1978.

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

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The question presented by this appeal is whether the Franchise Tax Board (FTB) properly included appellant's parent corporation in a combined report for the purposes of computing total business income and appropriate apportionment factors, even though the statute of limitations barred an assessment against the parent,

Pollution Research and Control Corporation (PRCC), a California corporation, created appellant, also a California corporation, in 1971. Appellant manufactures and assembles air pollution monitor-i:;' devices. In 1977, PRCC created another subsidiary, Dasibi Environmental Research and Development Corporation (Dasibi R&D), *which was incorporated and operated in Nevada. Dasibi R&D conducted research and development in the field of air pollution monitoring devices..

Appellant and PRCC filed separate returns for the income year ended June 30, 1978. During the course of an audit, appellant executed a waiver extending the statute of limitations. No similar extension waiver was obtained from the parent, PRCC. After the expiration of the original statute of limitations, but within the extended period, the FTB concluded that the three 'corporations were engaged in a unitary business. The resulting assessment was apportioned between appellant and PRCC, the two California corporations, resulting in an assessment against appellant and a refund due PRCC, which was applied to reduce the assessment against appellant.

Appellant does not appear to dispute the FTB's determination that the three affiliated corporations were engaged in a single unitary business. Appellant's argument is that, because the statute of limitations had expired as to PRCC before the proposed assessment was issued against appellant, PRCC's operations could not be included in the combined report for determining apportionable income. Then, because PRCC could not be included, a combined report and formula apportionment could not be used to determine the tax for any of the corporations.

This argument fails because its main premise, that PRCC could not be included in the combined report because the statute of limitations for an assessment against it had run, is erroneous. Although the business income of all the corporations is combined to determine the business income of the entire unitary group, it is

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then apportioned by formula between or among the individual corporations involved.

The function of this concept is not to disregard the various taxable entities involved and combine them as one unit. [Citations.] Rather its function is merely to ascertain the true income of the business attributable to sources within California. [Citation.] When two or more corporate entities each conduct a portion of the unitary business in this state, their separate entities are respected and a further allocation is made among them to determine the true income of each. [Citations.]

(Appeal of Household Finance Corporation, Cal. St. Bd. of Equal., Nov. 20, 1968.) Thus, each corporation remains a separate taxpayer, even though they are required to file a combined report.

The four-year statute of limitations in section 25663 precludes the FTB from issuing a proposed assessment against a taxpayer after the expiration of that time. Because PRCC did not execute a waiver of the statute, the FTB, in essence, lacked jurisdiction over it to subject it to tax when the statute expired. Thus, PRCC was in the same situation as the parent corporation in the Appeal of Beecham, Inc., decided on March 2, 1977, In that case, the FTB lacked jurisdiction to tax the foreign parent corporation, but the parent and other affiliates were properly included in the combined report because they were "included in the combined report not as California taxpayers but only to determine what the unitary business income was." (Appeal of Beecham, Inc., supra.) Similarly, PRCC was properly included in the combined report regardless of its susceptibility to taxation.

For the reasons stated above, 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 Dasibi Environment&l **Corporation** against a proposed assessment of additional franchise tax in the amount of \$7,741 for the income year ended June 30, 1978, be and the same is hereby sustained.

Done at Sacramento, California, this 19th day of November , 1986, by the State Board Of Equalization, with Board Members Mr. Nevins, Mr. Collis, Mr. Benentt, 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

