



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 Auditors.
For Respondent: W. M. Walsh, Assistant Franchise Tax Com-
missioner; James J. Arditto, Franchise
Tax Counsel.

O P I N I O N

This appeal is made pursuant to Section 27 of the Bank and Corporation Franchise Tax Act (Chapter 13, Statutes of 1929, as amended) from the action of the Franchise Tax Commissioner in denying the claim of Bostitch-Western, Inc. for a refund of tax in the amount of \$1,043.77 for the taxable year ended October 31, 1940.

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
- Bostitch, Inc.
- Bostitch-Boston, Inc.
- Bostitch-Chicago, Inc.
- Bostitch-New York, Inc.
- Bostitch-Northwest, Inc.
- Bostitch-St. Louis, Inc.
- Bostitch-Canada, Ltd.

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

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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 intercompany 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.

The Commissioner now concedes that the Appellant is entitled to a refund in the amount of \$218.73, and, accordingly, there remains at issue only the propriety of his action as respects the denial of the balance of the claim.

The issue presented herein is similar to that involved in the Appeal of P. Lorillard Company (March 9, 1944). As in that matter, the Commissioner relies upon the first paragraph of Section 14, as amended in 1937, and contends that the activities of the several corporations are so inextricably interrelated as to render impossible the segregation of the income properly attributable to each by separate accounting methods and that the income arising from business done in California may be determined only by reference to the income of the entire group. He has not questioned the **fairness** of the arrangements between Appellant and other members of the affiliated group and has not set forth any facts which indicate in any way the existence of any sort of arrangement between those members tending improperly to reflect Appellant's net income from business done within this State. While he has asserted that "...the activities of these corporations are so inextricably interrelated as to render it impossible to segregate the income properly attributable to each from the whole unitary mass by acceptable accounting methods,.." he has offered no evidence in support of this assertion nor has he controverted Appellant's evidence to the contrary. All the evidence before us, accordingly, indicates that the allocation to California of a portion of the combined net income of the affiliated group was not necessary to reflect Appellant's income from sources in this State.

On the basis of our decision in the Lorillard Appeal it must be concluded that the Commissioner was not authorized under

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Section 14 of the Act to allocate to California a portion of the combined net income of Appellant and the other members of the Bostitch group and that his determination of Appellant's tax liability through such action did not warrant the denial of Appellant's claim for refund.

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 that the action of Chas. J. McColgan, Franchise Tax Commissioner, in denying the claim of Bostitch-Western, Inc., for a refund of tax in the amount of \$1,043.77 for the taxable year ended October 31, 1940, pursuant to Chapter 13, Statutes of 1929, as amended, be and the same is hereby reversed. The Commissioner is hereby directed to credit said amount of \$1,043.77 against any taxes due from said Bostitch-Western, Inc. and to refund the balance of said amount to it and otherwise to proceed in conformity with this order.

Done at Los Angeles, California, this 14th day of November, 1944, by the State Board of Equalization.

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

ATTEST: F. S. Wahrhaftig, Acting Secretary