



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)
DURO FITTINGS COMPANY and)
DURO SALES CO.)

Appearances:

For Appellants: David Uzel, Certified Public Accountant

For Respondent: Crawford H. Thomas, Associate Tax Counsel

O P I N I O N

These appeals are made pursuant to section 26077 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of Duro Fittings Company and Duro Sales Co. for refunds of franchise taxes in the amounts of \$1,872.95 and \$1,362.72, respectively, for the taxable year 1961.

Appellant Duro Fittings Company was a California corporation engaged in manufacturing electrical fittings and appellant Duro Sales Co. was a California corporation which distributed the fittings. Both appellants reported their income on a calendar year basis. Their entire stock was owned by Grant Weise.

On January 12, 1961, each appellant transferred substantially all of its assets to American-Marietta Corporation pursuant to an "Agreement and Plan of Reorganization." In exchange for the assets appellant Duro Fittings Company and appellant Duro Sales Co. received 25,000 and 5,000 shares, respectively, of American-Marietta's common stock. Both appellants were dissolved on February 28, 1961, and the 30,000 shares of American-Marietta stock were distributed to Mr. Weise. This constituted approximately 2/10 of 1 percent of the entire stock of American-Marietta, Mr. Weise was retained as manager of the business formerly conducted by the appellants,

Section 23332 of the Revenue and Taxation Code provides that a corporation shall pay a tax only for the months of a taxable year preceding dissolution, unless the dissolution is pursuant to a

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reorganization, Relying on this section, appellants contend that they are entitled to refunds of 10/12 of the franchise taxes which they paid for the taxable year 1961, Respondent, however, takes the position that the dissolutions were pursuant to mergers, which according to section 23251, subdivision (c) of the Revenue and Taxation Code, are reorganizations.

The contentions raised by appellants were answered adversely to their positions in the Appeal of Heating Equipment Mfg. Co., Cal. St. Bd. of Equal., Nov. 14, 1960, 3 CCH Cal. Tax Cas. Par. 201-636, 2 P-H State & Local Tax Terv. 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, an interest which is definite and material and which represents a substantial part of the value of the thing transferred. The fact that the retained interest in this case was only a small percentage of the entire stock of the transferee is not controlling. Within the meaning of the federal statute comparable to section 23251, subdivision (c), a merger was held to have occurred even though the stockholders of the transferor retained less than a 1 percent interest in the transferee. (John S. Woodard, 30 B.T.A. 1216,) Appellants' stockholder received many thousands of shares of American-Marietta's stock, which represented the entire value of the assets transferred. This stock, in our opinion, was a definite and material interest.

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 26077 of the Revenue and Taxation Code that the action of the Franchise Tax Board in denying the claims of Duro Fittings Company and Duro Sales Co. for refunds of franchise taxes in the amounts of \$1,872.95 and \$1,362.72 respectively, for the taxable year 1961 be and the same is hereby sustained.

Done at Sacramento, California, this 5th day of February, 1963,
by the State Board of Equalization.

