



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)
HARBISON-WALKER REFRACTORIES COMPANY)

For Appellant: Albert F. Skelly and Burl D. Lack
Attorneys at Law

For Respondent: Crawford H. Thomas
Chief Counsel

Peter S. Pierson
Counsel

O P I N I O N

These appeals are made pursuant to section 25667 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of Harbison-Walker Refractories Company against proposed assessments of additional franchise tax in the amounts of \$398.30, \$594.92, \$694.54, \$976.83, \$3,125.12, \$1,469.73, \$8,758.26, \$6,944.53, \$6,296.73, \$3,876.90 and \$3,158.38 for the taxable years 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962, 1963 and 1964, respectively. Subsequent to the filing of these appeals, appellant paid the proposed assessments. Accordingly, pursuant to section 26078 of the Revenue and Taxation Code, the appeals shall be treated as appeals from the denial of claims for refund.

Appellant is a Pennsylvania corporation which is engaged in the business of manufacturing and selling refractories. These products are generally made of fire-clay, silica, magnesite, or chrome, and are used to line various types of commercial high temperature furnaces. In 1945 appellant acquired all the stock of Canadian Refractories Limited, a Canadian corporation engaged in the same general business as appellant. During the years in question the parent had plants and sales offices located

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was not related to any specific services. The fee was discontinued subsequent to the years in question.

Appellant filed franchise tax returns for each of the years at issue pursuant to the theory that only the parent corporation was engaged in the unitary business operating within and without California. The Franchise Tax Board determined that Canadian Refractories Limited and Northwest Magnesite Company, another subsidiary of appellant, should have been included in the unitary enterprise during the taxable years 1958 through 1964. After negotiation, the parties agreed that Northwest Magnesite Company was not part of the unitary operations. Evidently the assessments for the taxable years 1954 through 1957 were appealed by the parent because it initially thought that respondent's determination also applied to that period. However respondent has subsequently indicated that these assessments do not relate to the unitary business determination, and therefore they will not be considered further here. The sole issue remaining to be decided is whether Canadian Refractories Limited should have been included in the unitary business with respect to the taxable years 1958 through 1964.

When a taxpayer derives income from sources both within and without California, its tax liabilities shall be measured by the net income derived from or attributable to sources within this state. (Rev. & Tax. Code, § 25101.) If a business is unitary, the income attributable to California must be computed by formula allocation rather than by the separate accounting method. (Butler Bros. v. McColgan, 17 Cal. 2d 664 [111 P.2d 334], aff'd, 315 U.S. 501 [86 L. Ed. 991]; Edison California Stores, Inc. v. McColgan, 30 Cal. 2d 472 [183 P.2d 16]) The above cited cases developed two tests for determining whether a business is unitary. Under one test such status is found if the unities of ownership, operation, and use exist. (Butler Bros. v. McColgan, supra.) Under the other test, a business is unitary when operation of the business done within the state is dependent upon or contributes to the operation of the business without the state. (Edison California Stores, Inc. v. McColgan, supra.) Recent decisions of the California Supreme Court have reaffirmed these tests. (Superior Oil Co. v. Franchise Tax Board, 60 Cal. 2d 406 [34 Cal. Rptr. 545, 386 P.2d 333]; Honolulu Oil Corp. v. Franchise Tax Board, 60 Cal. 2d 417 [34 Cal. Rptr. 552, 386 P.2d 40].)

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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 Harbison-Walker Refractories Company for refund of franchise tax in the amounts of \$398.30, \$694.92, \$694.64 and \$976.83 for the taxable years 1954, 1955, 1956 and 1957, respectively, be and the same is hereby sustained, and that the action of the Franchise Tax Board in denying the claims of Harbison-Walker Refractories Company for refund of franchise tax in the amounts of \$3,125.12, \$1,462.73, \$8,758.26, \$6,944.53, \$6,296.73, \$3,876.90 and \$3,158.38 for the taxable years 1958, 1959, 1960, 1961, 1962, 1963 and 1964, respectively, be and the same is hereby reversed.

Done at Sacramento, California, this 4th day of May, 1970, by the State Board of Equalization.

George P. Powell, Chairman
John W. Lynch, Member
Paul C. ..., Member
_____, Member
_____, Member

ATTEST: J. H. ..., Secretary