

In The Matter of the Petition of "V" & "W"

for a Declaratory Ruling

DOC #4012, Effective February 28, 1986

Pursuant to RSA 541-A:1, 1-b, 541-A:2, I(c) and Rev 104.04 New Hampshire Code of Administrative Rules, "V" a manufacturer of labels, having its principle office at ... , New Hampshire, EIN #, and "W", a manufacturer of business forms having its principle office at, New York, EIN# have petitioned the Department of Revenue Administration for a declaratory ruling stating that the two businesses are operating separate and distinct from each other and should be found to be non-unitary. The Petitioners represent the following:

- (1) "W" will purchase "V"
- (2) "W" is a manufacturer of business forms, principally of a continuous nature. "V" is a manufacturer of pressure sensitive labels. To a very limited extent, each company's marketing staff will discuss the other's products with prospective customers.
- (3) "W" and "V" will continue to operate autonomously in the area of purchasing.
- (4) Intercompany sales may occur to a very limited extent. These transactions will be made at "arms length".
- (5) Travel by executives of the parent company to the subsidiary will be only in amounts sufficient to monitor and protect its investment in the subsidiary.
- (6) Travel by executives of the subsidiary to the corporate headquarters of the parent will be minimal and in the nature of protection of the parent's investment in the subsidiary.
- (7) Operations reports will be prepared by the subsidiary for review by the parent. Utilization of the reports will be in the nature of monitoring and preserving its investment in the subsidiary.
- (8) The subsidiary will prepare Federal income tax information for itself and will forward the information to the parent for inclusion in a consolidated Federal income tax return. The subsidiary will prepare and file all state income tax returns.
- (9) The parent and subsidiary have separate and distinct accounting systems and data processing equipment. There are no plans to integrate the preparation of payroll.
- (10) The parent and subsidiary will maintain separate bank accounts. Each company will control its own account. A cash management system will be utilized in order to maximize the use of cash. This system will provide the subsidiary with an "arms length" rate of return.
- (11) Approval of subsidiary loans by the parent will be only in the nature of investment protection.
- (12) Excess cash of the subsidiary will be invested with the parent at arms length interest rates to be negotiated on an ongoing basis.
- (13) The present management of the subsidiary will remain intact.
- (14) Dividends will be paid to the current management of the subsidiary, in their ownership ratio, as well as to the parent company.
- (15) The subsidiary will submit an annual capital expenditure budget which will be approved first by the Board of Directors of the subsidiary and then by the Board of Directors of the parent.

(16) Contracts in the ordinary course of business are not anticipated. Infrequent specialized contracts will be approved by the Board of Directors of the subsidiary, if they are significant in nature.

(17) Management fees will be paid by the subsidiary to the parent in an amount sufficient to reimburse the parent for its costs that relate only to the protection of its investment in the subsidiary.

(18) The attorneys for the parent may provide occasional services to the subsidiary in the future, although none are contemplated at this time.

(19) Two levels of management approval are required for all promotions, salary increases and bonuses. Where the second level of approval is not available at the subsidiary, the parent will provide the second level of approval.

(20) The parent will approve the annual budgets of the subsidiary from the perspective of protecting its investment in the subsidiary.

(21) Other related facts contained in the unitary questionnaire completed by Parent.

In connection with the above proposed purchase of "V" by "W" the Petitioners request a declaratory ruling that the two multi-state business operations, operating as represented, will be held by the Department of Revenue Administration to be operating as separate and discrete business organizations. New Hampshire Revised Statutes Annotated 77-A:6, IV provides "In the case of a corporation liable to report under this chapter which owns or controls, either directly or indirectly, more than 50 percent of the voting stock of another corporation, or other corporations, and in the case of a corporation liable to report under this chapter and owned or controlled, either directly or indirectly, through ownership of more than 50 percent of the voting stock by another corporation, the commissioner may require a consolidated report showing the combined net income or such other facts as he deems necessary".

In applying this provision, the Department looks to Administrative Rule, Rev 306.03, which requires that the following areas be considered in determining whether a group of business organizations are conducting a unitary business:

- a. Unity of ownership.
- b. Unity of operation as evidenced by central purchasing, advertising, accounting and management, etc.
- c. Unity of use in its centralized executive force and centralized system of operations.
- d. Operation of the business activity within the state is dependent upon or contributes to the business activity outside the state.

In view of the foregoing representations and specifically based upon an analysis of them, the Department of Revenue Administration finds that "W" and "V" do not satisfy the tests; (a) unity of operation, and (b) unity of use, or (c) dependency, and; therefore, are operating two separate discrete business organizations and will not be required to file a combined return under RSA 77-A, the New Hampshire Business Profits Tax.

Everett V. Taylor, Commissioner