



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
OVERSEAS CENTRAL ENTERPRISE, INC. }

Appearances:

For Appellant: **Lemuel H. Matthews**, Attorney at Law

For Respondent: **A. Ben Jacobson**, Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to section **25667** of the Revenue and, Taxation Code from the action of the Franchise Tax Board on the protest of Overseas Central Enterprise, Inc., against proposed assessments of additional franchise tax in the amounts of **\$638.64**, **\$3,749.07** and **\$2,128.32** for the income years ended April **30**, 1956, 1957 and 1958, respectively.

Appellant was organized under the laws of this state in 1953 for the general purpose of engaging in the export-import trade and more particularly for the purpose of exploiting certain existing contracts with Japanese steel mills calling for the supplying of Nevada iron ore. A prior corporation, which had employed L. R. Schinazi, Jr., Marc **Leibkind** and Lucien Pourbaix, three of appellant's incorporators, abandoned these contracts when it withdrew from business here. In order to take advantage of the opportunity, persons connected with these contracts, including Mr. Schinazi, Mr. **Leibkind**, Mr. **Pourbaix** and **J. R. Johansson**, formed appellant.

Although the sale of iron ore to Japan, which averaged between **\$4,000,000** and **\$4,500,000** annually during the years in question, was appellant's principal activity, it did engage in other business. In 1957, appellant exported in excess of **\$3,000,000** of mining machinery and equipment.

Appellant's headquarters and principal-office is in San Francisco. During the period in question, appellant employed

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twelve to fifteen people, four of whom were permanently stationed in either Japan or the Philippine Islands. Mr. Johansson, one of the original incorporators, was located in Japan where he was the president of his own export-import firm. Also in Japan were Senzo Hachiuma and Yoshio Hachiuma, the president and vice president of Nanyo Bussan Co., Ltd., a Japanese trading company, Jesus Cabarrus, residing in Manila, held interests in a number of Philippine mining corporations. These four men were stockholders and all but Mr. Johansson were officers of appellant, Mr. Cabarrus owned 30 percent of appellant's shares and was its president until late 1957 when he resigned and disposed of his stock. Appellant paid salaries to these men and sometimes bonuses, except that for the year ended in 1956 only Johansson received compensation and thereafter Yoshio Hachiuma received no compensation until he was paid a bonus for the year ended in 1958.

The iron ore contracts with Japanese steel mills were on an annual basis and had to be renegotiated each year in Tokyo. Changes in the contract terms generally related to price and ore specifications. It is the policy of Japanese steel mills to work through a Japanese trading company, which acts as the mill's purchasing agent. All of appellant's iron ore sales were to steel mills represented by the Nanyo Bussan Co. Mr. Johansson and Senzo and Yoshio Hachiuma were instrumental in the renewal of the iron ore contracts; however, members of appellant's San Francisco staff always participated in the final negotiations.

Mr. Schinazi made a trip overseas on the average of once every six to eight months, and five others of appellant's San Francisco staff made similar trips. For example, John Chavez, employed by appellant during the years in question, spent over thirty days in Japan in 1958 for the purpose of developing appellant's business. During that time he conferred with officials of several Japanese firms in an endeavor to promote additional sales of iron ore. He was assisted in this activity by Mr. Johansson and Yoshio Hachiuma.

Appellant was aided in its sales of mining equipment in the Philippines by Jesus Cabarrus, who was the president or vice president of three of the four companies with whom appellant did business. In connection with these sales, two of appellant's San Francisco staff, Mr. Schinazi and Mr. Cabarrus' brother, Joaquin, made several trips to the Philippines.

It is undisputed that appellant engaged in no sales solicitation in California with regard to the iron ore and the mining equipment.

In its returns for the years 1956, 1957 and 1958, appellant apportioned 4.18 percent, 0.13 percent and 3.02

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percent of its sales to California, The Franchise Tax Board revised appellant's allocation of income to California using a two-factor formula of payroll and sales, On the ground that all of appellant's sales, except those made to purchasers in the Philippine Islands with whom Jesus Cabarrus had no connection, were properly attributable to this state, respondent allocated 99.80 percent, 98.68 percent and 98.40 percent of the sales to California. Only the action reapportioning sales is in dispute,

With respect to the place where sales should be apportioned for the purposes, of the sales factor in the allocation formula, the focal point for consideration is the place where the activities of the corporation's officers and employees occurred which resulted in the sales. (El Dorado Oil Works v. McColgan 34 Cal. 2d 731, 742 [215 P.2d, 4] appeal dismissed, 340 U.S. 0% [95 L. Ed. 589]; Irvine Co. v. McColgan 26, Cal. 2d 160 [157 P.2d 84, .]) Sales made by independent brokers are not considered to be sales activity by the corporation in computing the-sales factor, (Irvine Co, v. McColgan, supra, 168.)

The Franchise Tax Board argues that the sales of iron ore were not attributable to any sales activity by appellant itself. It is urged that these sales were solely attributable to the efforts of Seneo and Yoshio Hachiuma who, although they may have been officers or employees of appellant, must be considered to have been acting in their capacities as employees of the Nanyo Bussan Co., an independent agent, Thus, respondent concludes that all sales in Japan were made by an Independent agent and cannot be apportioned outside this state. Further, respondent submits that appellant engaged in no activity with regard to the sales made to Philippine purchasers with whom Jesus Cabarrus was closely connected, It alleges that because, in each case, Mr. Cabarrus was an officer of the purchaser no sales effort was required, In the absence of any selling activity, respondent argues that these sales must also be apportioned to California.

We are of the opinion that the Franchise Tax Board's conclusions are not supported by the record, Assuming, without deciding, that we can discount the activities of the Hachiumas and Jesus Cabarrus, there still remains, uncontradicted by evidence in the record, the fact that Mr. Schinazi, Joaquin Cabarrus, Mr. Chavez, and several other persons stationed in San Francisco, as well as Mr. Johansson, had a part in these sales, Unless we are prepared to conclude that appellant paid the salaries and traveling expenses of these people for no reason at all, some importance must be assigned to their activities, The fact that the effort appellant expended in securing these orders may have been small, because of its influential connections, does not justify apportioning these sales to California where none of the negotiations occurred. (Appeal of Reno Liquor Co., Cal. St. Bd. of Equal., Feb. 17, 1959, 2 CCH Cal. Tax Cas. Par. 201-248, P-H State & Local Tax Serv. Cal. Par. 13201.)

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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 Overseas Central Enterprise, Inc., against proposed assessments of additional franchise tax in the amounts of \$638.64, \$3,749.07 and \$2,128.32 for the income years ended April 30, 1956, 1957 and 1958, respectively, be and the same is hereby reversed with respect to reapportionment of appellant's sales. In all other respects the action of the Franchise Tax Board is sustained,

Done at Sacramento California, this 18th day of February, 1964, by the State Board of Equalization.

Paul R. Leake, Chairman

John W. Lynch, Member

Richard J. ..., Member

Bob ..., Member

..., Member

Attest: M. ... Secretary