BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)
)
THE ANACONDA COMPANY, ANACONDA)
WIRE& CABLE COMPANY, AND THE)
ANACONDA AMERICAN BRASS COMPANY)

Appearances:

For Appellants: Bert A Lewis
Attorney at Law

For Respondent: Crawford H. Thomas
Chief 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 The Anaconda Company, Anaconda Wire & Cable Company, and The Anaconda American Brass Company against proposed assessments of additional franchise tax in the amounts and for the years as follows:

Taxpayer	Income Year	Proposed Assessment
The Anaconda Company	1955	$20,737.85
	1956	15,760.31
	1957	6,202.70
	1958	451.11
Anaconda Wire. & Cable Company	1955	$16,164.17
	1956	5,930.37
	1958	6,426.65
The Anaconda American Brass Company	1955	$26,392.69
	1956	27,576.40
	1957	14,539.66
	1958	20,129.78

Subsequent to the hearing in this case, the Franchise Tax Board agreed to make certain revisions in its computation of the property factor of the apportionment formula. As a result of these revisions, the Franchise Tax Board now states that the correct adjustments to the franchise tax liability of each taxpayer are as follows:

Taxpayer	Income Year	Proposed Assessment (Overpayment)
The Anaconda Company	1955	$15,392
	1956	11,077
	1957	4,972
	1958	(110)
Anaconda Wire & Cable Company	1955	$ 5,939
	1956	(7,349)
	1957	(13,573)
	1958	4,541
The Anaconda American Brass Company	1955	$24,340
	1956	24,223
	1957	9,921
	1958	14,840

Although for convenience they are sometimes narrated in the present tense, the facts which follow are those that existed during the years 1955-1958.

The three appellant corporations are part of a group of some 36 companies which are interrelated through common ownership of their stock by The Anaconda Company (Anaconda). Anaconda is a Montana corporation with principal offices in New York and it does business in California. The Anaconda American Brass Company (American Brass), a Connecticut corporation with principal offices in Waterbury, Connecticut, is wholly owned by Anaconda and also does business in California. Anaconda Wire & Cable Company (Wire & Cable), a Delaware corporation with principal offices in New York, does business in California and 73 percent of its outstanding stock is owned by Anaconda.

For the purposes of this appeal, the appellants do not contest respondent's finding that Anaconda and all of its domestic subsidiaries are engaged in a single unitary business. The appellants contend, however, that several Anaconda subsidiaries engaged in mining in Chile and Mexico are not a part of the unitary business. Respondent's determination that those foreign mining subsidiaries are part of the unitary business resulted in

the' proposed assessments and overpayments set forth above. Respondent arrived at these figures by computing the combined net income of Anaconda and all its subsidiaries and allocating a percentage of 'that income to California for each year. The income thus attributed to sources in California was then apportioned among the three corporations doing business here.

The foreign mining companies in question (referred to collectively herein as the Latin American companies or Latin American affiliates) are Chile Exploration Company (Chilex), Andes Copper Mining Company (Andes), and Cananea Consolidated Copper Company, S. A. (Cananea). None of these corporations owns property or does business in California. Chilex is a New Jersey corporation which owns and operates metal mines in Chile. All of its stock is owned by Chile Copper Company, a Delaware corporation, 99 percent of whose stock is owned by Anaconda. Andes is a Delaware corporation which also owns and operates metal mines in Chile, and 99 percent of its stock is owned directly by Anaconda. Cananea is a Mexican corporation which owns and operates metal mines in Mexico. Virtuaily all of its stock is owned by Greene Cananea Copper Company, a Minnesota corporation owned 99 percent by Anaconda.

Anaconda and its subsidiaries constitute one of the world's three largest integrated copper enterprises. The other large integrated groups are headed by Kennecott Co'pper Company and Phelps Dodge Corporation. Although the Anaconda family of corporations mines and fabricates metals other than copper, the operations related to the other metals are unimportant for purposes of this appeal,, Copper is the key to the relationships between the three appellants and the Latin American affiliates. Anaconda owns and operates mines in the continental United States, the principal product of which is copper. Copper is also the principal metal mined by the Latin American companies. American Brass and Wire & Cable both fabricate copper into various end-use products.

During the four years in question, American Brass and Wire & Cable purchased, at going market prices, an average of approximately 80 percent of their combined copper requirements from Anaconda and its affiliated companies. A yearly average of approximately 20 percent of these requirements was derived from the copper mining operations of the Latin American affiliates. (The exact percentages for these four year; were: 32.64%--1955, 28.62%--1956, 18.09%--1957, 0.0%--1958.) The Latin

American copper thus acquired by the two fabricating subsidiaries represented a yearly average of approximately 14 percent of the total copper production of the Latin American affiliates. (The precise figures were: 25.63%--1955, 20.27%--1956, 9.38%--1957, 0.0%--1958.) The magnitude of these intercorporate transfers is perhaps best illustrated by the amounts of copper which American Brass. and Wire & Cable purchased from the Latin American companies in these years; 160,736,601 pounds in 1955; 129,230,376 pounds in 1956; 61,557,314 pounds in 1957; and, of course', none in 1958.

Although substantial amounts of the copper produced by the Latin American affiliates found their way into the fabricating plants of Anaconda subsidiaries, most of the copper so produced was sold in foreign markets to purchasers unrelated to Anaconda. Included in these foreign sales was nearly all of the copper which was refined in Latin America, as well as a portion of the copper which Chilex and Andes shipped to Perth Amboy, New Jersey, for refining.. The Perth Amboy refinery is owned and operated by International Smelting and Refining Company, another wholly owned subsidiary of Anaconda. This subsidiary refines and processes, on a uniform toll basis, copper produced by Chilex, Andes, Anaconda, Anaconda's United States subsidiaries, and unrelated copper producers. Approximately 50 percent of the copper extracted by Chilex and Andes 'is refined by International Smelting. All of Cananea's copper production is required by Mexican law to be sold to Cobre de Mexico, S.A., a nonaffiliated Mexican corporation which refines the copper and then sells it to Anaconda'affiliates and unrelated purchasers.

In addition to the intercorporate transfers of copper, there were other ties binding the Latin American affiliates to Anaconda and its United States subsidiaries.' To some extent at least, Anaconda's officers and directors were also officers and directors of the Latin American companies. Anaconda has a vice president in charge of Latin American affairs, and it appears that Anaconda executives have figured prominently over the years in relations with the Government of Chile. In this connection the president of Anaconda travels to Chile some 25 times per year. Also, it is stipulated that Anaconda executives review the major decisions of the Latin American companies for consistency with basic policy objectives. Executive personnel have on occasion been transferred between the Latin American affiliates and Anaconda and the domestic affiliates. During the four appeal years, one such transfer took place.

With respect to personnel services generally, each Latin American company maintained a separate personnel department. But in addition, these three companies maintained a joint personnel department in the United States to recruit employees for Latin American service. In 1955 this department was combined with Anaconda's personnel department, but it was reestablished as a separate department in 1959. Anaconda's personnel department also recruited employees to fill positions in the New York offices of the Latin American affiliates.

Other overhead or service functions are also centralized to a degree. Anaconda furnishes some central purchasing, advertising, and accounting services to its Latin American subsidiaries, the avowed purpose being to avoid duplication and thereby to effect economies. Anaconda's metallurgical and geological research department performs highly specialized and technical services for the Latin American affiliates. Similarly, its engineering department provides mechanical and electrical engineering services for those companies, primarily in connection with capital expansion. In 1958 this department was separately incorporated as a wholly owned subsidiary of Anaconda, and the Latin American affiliates continued to utilize its services even after Anaconda sold the company to outsiders in 1961. Qualified salaried employees of the Latin American companies are covered by Anaconda's retirement plan. Anaconda's insurance department secures insurance coverage on the properties and on certain aspects of the operations of the Latin American affiliates, whenever those companies are unable to obtain the needed coverage through underwriters in Chile and Mexico. For all of the above services, the Latin American companies are charged fees which Anaconda considers to be fair and reasonable.

When a corporate taxpayer derives income from sources both within and without California, its tax liabilities must be measured by the net income attributable to sources within this state. (Rev. & Tax. Code, § 25101.) If the taxpayer's business is unitary, the income attributable to California sources must be determined by formulary apportionment 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].) These cases established two general tests for determining whether a business is unitary. Under the Butler Bros. test, a unitary business is definitely established by the presence of the three unities of ownership, operation, and use. Under the Edison test, a business is unitary when the operation of the business done within the state is

dependent upon or contributes to the operation Of the business without the state. In two more recent decisions, the California Supreme Court affirmed the continuing vitality of the tests announced in Butler Bros. and Edison. (Superior Oil Co. v. Franchise Tax Board, 60 Cal. 2d 406 [34 Cal. Rptr. 545; 386 P. 2d 33]; Honolulu Oil Corp. v. Franchise Tax Board, 60 Cal. 2d 417 [34 Cal. Rptr. 552; 386 P.2d 40].)

'By either general standard the Latin American affiliates are unitary with Anaconda and its other subsidiaries. Clearly, the three unities are present: unity of ownership exists by virtue of Anaconda's controlling stock ownership in the companies here involved; unity of operation is evidenced by the centralization of service and overhead functions; and unity of use is established by the vertical integration of the copper operations and by Anaconda's control, through interlocking top executives, of the major management decisions of the Latin American affiliates. It is equally clear that the operations of Chilex, Andes, and Canahea depend upon and contribute to the operations of the other parts of the Anaconda empire. All three mining companies depend upon their parent in the critical areas of engineering services and geological and metallurgical research. Chilex and Andes also depend upon International Smelting to refine nearly 50 percent of the copper they produce, and it may certainly be assumed that the processing of these huge quantities of copper contributes to International Smelting's profitability. Along the same line, American Brass and Wire & Cable purchase copper from all three Latin American mining companies, and these purchases. constitute both a substantial percentage of the fabricators' copper requirements and a significant portion of the total copper output of the mining companies. The complete integration of operations among these corporate siblings -- involving the mining, refining, and fabricating of copper -- represents the type of operational interdependence which lies at the heart of the unitary business concept. (Appeals of Monsanto Company, Cal. St. Bd. of Equal., Nov. 6, 1970.)

The appellants contend, however, that even if the Latin American companies are part of the unitary business, they are unitary only to the extent of the percentage of their copper production which was required for the fabricating needs of American Brass and, Wire & Cable. This argument is based on an example appearing in Keesling and Warren, The Unitary Concept in the Allocation of Income, 12 Hastings L.J. 42, 53-54, involving a Company operating an interstate railroad and an oil production business carried on entirely in one state.

The authors suggest that. if part of the oil is used in the railroad operations and the rest is separately sold, the oil activities should be considered partly unitary and partly separate. Even if this thesis constitutes a correct statement of what the law is or ought to be on those particular facts, we are not convinced that it is applicable to the case before us. In the first place, the appellants have ignored International Smelting, which refines 50 percent of the copper produced by Chilex and Andes. Even if the appellants correctly assume that unity can be quantified by exact percentages, and that is problematical, no reason appears why that 50 percent figure could not represent the degree of unity rather than the lesser figure of the percentage of Latin American copper production bought by American Brass and Wire & Cable. More importantly, 'however, we have not been persuaded that the suggestion by Keesling and Warren. should be applied to a situation where some of the affiliated companies are engaged in exactly the same business (copper mining). We believe under the facts here presented that the interdependence of Anaconda and the Latin American companies cannot properly be measured solely by the percentage of the latter's copper production which is sold to American Brass and Wire & Cable.

Ordinarily, a finding that the g'eneral tests for a unitary business have been satisfied would end the case. These appeals are unusual, however, in that we deferred our decision for several years pending the outcome of litigation in the California courts concerning the unitary nature of another large copper group. In 1970 the District Court of Appeal decided Chase Brass & Copper Co. v. Franchise Tax Board, 10 Cal. App. 36 496, appeal dismissed and cert. denied, 400 U.S. 961 [27 L. Ed. 2d 381], involving the Kennecott group. Subsequently, the three appellants 'herein filed additional briefs requesting a decision consistent with the court's ruling in Chase Brass. The appellants made this request because in Chase Brass the court held that Braden Copper Co. (Braden), a Kennecott subsidiary operating copper mines in Chile, was not part of a unitary business conducted within and without California, Respondent has opposed appellants' request, contending that Chase Brass is distinguishable from the instant appeals.

We have carefully considered the opinion in Chase Brass, along with the detailed discussion of it contained in the briefs, and we have concluded that the court's decision does not aid the resolution of the appeals before us. The aspect of that case claimed to

be controlling here is the following cryptic one-sentence holding: "Except for the matter of sales and joint ownership, Braden and Chase[1] are not unitary." (10 Cal. App. 3d at 506.) In their briefs the parties could not agree on what the court meant by that sentence. The appellants contend that the court meant Braden was not unitary with Kennecott as well as not unitary with Chase. Respondent contends that the court's words should be read literally as referring only to Braden and Chase. As respondent views the case, the court said nothing about the relationship of Braden and Kennecott because neither was a California taxpayer. We cannot determine with certainty from the decision what the court had in mind regarding Braden. Since the court never explicitly said that Braden and Kennecott were not unitary--indeed, it did not even discuss the nature of the ties connecting the two companies--it is difficult to accept the appellants' interpretation of the case. On the other hand, if the court's words are taken literally, how does one explain the holding that Chase and Kennecott Sales Corporation are unitary? From all that appears in the opinion, they also are not unitary "except for the matter of sales and joint owner ship." But even if the court did not intend to say that Braden and Kennecott were not unitary, we hesitate to go further and impute to the court the notion that it did not have to decide that issue because neither corporation was a California taxpayer., In cases involving related corporations, such a theory would permit the scope of the unitary business to depend solely on whether the parent itself, as opposed to a unitary subsidiary, does business in California. Since we do not believe that the California Supreme Court's decision in Edison California Stores, Inc. v. McColgan, 30 Cal. 2d 472 [183 P.2d 16], allows a unitary case to turn on that factor, we will not assume that the Court of Appeal adopted a theory which conflicts with the long-standing views of a higher court.

Whatever the court's theory for finding Braden to be nonunitary, it did not articulate it clearly and we cannot speculate as to what it might have been. Under

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[1] Chase was a wholly owned fabricating subsidiary of Kennecott and, with one negligible exception, it was the only member of the Kennecott group doing business in California. Thus, the case involved Chase's franchise tax liability.

such circumstances Chase Brass cannot be relied upon for guidance in the disposition of the present appeals. We are left, then, with the general body of precedent in the unitary business area, and, as we have already seen, that precedent compels the conclusion that the appellants and the Latin American companies were engaged in a single unitary business. Further discussion of this point is unnecessary, except to dispose of an argument concerning the controls exercised by both Chile and Mexico over the operations of the Anaconda mining subsidiaries in those countries. These controls were allegedly so severe that Anaconda says it really did not "control" these subsidiaries and, therefore, they should not be included in the overall unitary business.

In the case of Mexico, the extent of these controls was that Mexico dictated to whom the copper produced in that country could be sold. Chile exerted some influence over capital investment in the mines, copper output, the price at which the copper was sold and, in some cases, to whom it was sold. It may be admitted that some or all of the controls were onerous for the companies involved, and certainly these controls are not the sort encountered by corporations operating exclusively in the United States. But despite all this foreign governmental interference, the operations of the Latin American affiliates were still markedly interrelated with Anaconda's domestic operations. In the final analysis, the appellants are asking us to exclude the Latin American companies from the unitary group because, as a result of the actions of Chile and Mexico, those companies were not more unitary with their domestic affiliates than we have already found them to be. We cannot find them nonunitary on that basis.

Since we have found that the Latin American affiliates are unitary with the appellants, we must dispose of one other matter. The appellants contend that the property factor is still erroneous despite the revisions by respondent which were alluded to in the first paragraph of this opinion. The alleged errors consist of the use of historical original cost of the land rather than fair market value and the exclusion of the item characterized as "cost of acquisition in excess of book value." This latter item refers to the excess of the purchase price of mining company stock over the net book value of the mining company's assets at the time of purchase. In attacking respondent's composition of the apportionment formula, the appellants assume the burden of proving, by clear and convincing evidence, that the formula produces an arbitrary or unreasonable result. (Butler Bros. v. McColgan, 17 Cal. 2d 664 [111 P.2d 334], aff'd 315 U.S. 501 [86 L. Ed. 991]; McDonnell Douglas Corp. v. Franchise Tax Board, 69 Cal. 2d 506 [72 Cal. Rptr. 465; 446 P.2d 313].) Since the appellants have failed to produce such evidence, the formula devised by respondent will not be overturned.

ORDER

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 protests of The Anaconda Company, Anaconda Wire & Cable Company, and The Anaconda American Brass Company against proposed assessments of additional franchise tax in the amounts and for the years as follows:

Taxpayer	Income Year	Proposed Assessment
The Anaconda Company	1955	$20,737.85
	1956	15,760.31
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	1956	27,576.40
	1957	14,539.66
	1958	20,129.78

be and the same are hereby modified in accordance with respondent's concessions regnrding the property factor. In all other respects the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 11th day of May, 1972, by the State Board of Equalization.

John W. Lynch, Chairman

, Member

, Member

, Member

, Member

ATTEST: , Secretary