BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
COX HOBBIES, INC.)

For Appellant: J. Terry Eager
Certified Public Accountant

For Respondent: Kathleen M. Morris
Counsel

OPINION

This appeal is made pursuant to section 25666 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Cox Hobbies, Inc. against proposed assessments of additional franchise tax in the amounts of $3,524.22, $5,774.11 and $8,246.93 for the income years 1971, 1974 and 1975, respectively.

Appellant, a manufacturer of hobby items, is a wholly owned subsidiary of Leisure Dynamics, Inc. Leisure Dynamics is a Minnesota corporation engaged in the manufacture of toys, games and hobby products. In addition to appellant, Leisure Dynamics owns 100 percent of the stock of four additional domestic corporations engaged in the manufacture or distribution of toys, games and hobby products. Leisure Dynamics also is the sole shareholder of three foreign subsidiaries: Cox International Limited, an assembler of hobby parts which does business in Hong Kong; Alness Toy Industries Limited, a marketer of the corporate family's products in Canada; and Leisure Dynamics of Canada Limited, a manufacturer and distributor of toys in Canada. The final member of this corporate enterprise is Leisure Dynamics International Sales Corporation, a domestic international sales corporation (DISC) created by the parent corporation pursuant to the provisions of the Internal Revenue Code.

Appellant filed a California combined report for the appeal years including all of the domestic companies in the corporate family, but excluding the foreign subsidiaries and the DISC. As a result of an audit, respondent determined that the DISC and all the foreign subsidiaries were part of the unitary group. Therefore, respondent included the income and factors of these operations in the combined report.

Respondent's determination that appellant is engaged in a unitary business with its parent and its parent's other subsidiaries is presumptively correct, and the burden to show that such determination is erroneous is upon appellant. (Appeal of John Deere Plow Co. of Moline, Cal. St. Bd. of Equal. Dec. [illegible], 1961.) In this appeal appellant has offered absolutely no evidence in opposition to respondent's determination. Thus, in the absence of some compelling reason to invalidate respondent's determination, we must conclude that appellant has failed to carry its burden of proof and that respondent's action in this matter was correct.

Appellant first asserts that respondent does not have the authority to include foreign subsidiaries in a unitary group. Appellant offers no argument in support of this proposition, merely citing Chase Brass & Copper Co. v. Franchise Tax Board, 10 Cal.App.3d 496 [87 Cal.Rptr. 239] [illegible] and cert. den., 400 U.S. 961 [27 L.Ed.2d 381] (1970). Contrary to appellant's assertion, foreign subsidiaries have been includible in a

unitary business since the 1924 United States Supreme Court case of Bass, Ratcliff, & Gretton v. State Tax Commission, 266 U.S. 271 [69 L.Ed. 2821 . (Accord Appeal of Grolier Society, Inc., Cal. St. Bd. of Equal., Aug. 19, 1975; Appeal of The Anaconda Co., et al., Cal. St. Bd. of Equal., May 11, 1972; cf. Mobil Oil Corporation v. Commissioner of Taxes, -- U.S. -- [63 L.Ed.2d 510] (1980).) Chase Brass, supra, does not hold otherwise. (See Appeal of the Anaconda Co., et al., supra.)

Next, appellant contends that the standard three-factor formula cannot fairly apportion the income of multinational operations. Here again appellant has failed to offer even a scintilla of evidence to support its assertion. Accordingly, appellant's contention must be rejected. (See Appeal of Donald M. Drake Company, Cal. St. Bd. of Equal., Feb. 3, 1977, mod. March 2, 1977.)

Since appellant has failed to offer any evidence in support of either of its contentions, we conclude that it has failed to carry its burden of showing that respondent's determination was erroneous. Accordingly, respondent's action in this matter must be sustained.

Appeal of Cox.Hobbies, Inc.

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 protest of Cox Hobbies, Inc. against proposed assessments of additional franchise tax in the amounts of $3,524.22, $5,774.11 and $8,246.93 for the income years 1971, 1974 and 1975, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 18th day of November, 1980, by the State Board of Equalization, with Members Nevins, Reilly, Dronenburg and Bennett present.

Richard Nevins, Chairman

George R. Reilly, Member

Ernest J. Dronenburg, Jr., Member

William M. Bennett, Member

_____, Member