

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
PARADOR MINING CO., INC.)

Appearances:

For Appellant: **Wareham** C. Seaman
 Attorney at Law

For Respondent: David M. Hinman
 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 **Parador** Mining Company, Inc., against a proposed assessment of additional franchise tax in the amount of **\$4,741.96** for the income year ended March 31, 1968.

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The issue for determination is whether appellant was operating a single unitary business so that its income attributable to California must be computed by formula apportionment rather than **by** separate accounting.

Appellant, a closely held corporation, was incorporated in California. Its primary business activity is mineral exploration. During the year in issue, appellant's major shareholder was Elizabeth **Adoor**, a San Francisco resident who owned 40 and one-half percent of appellant's stock. During 1968, appellant's headquarters and only permanent office was located in Ms. **Adoor's** home in San Francisco. **Ms. Adoor** was appellant's president and principal employee. The only other two employees were Virginia Zarafonitis, who resided in Oakland, and Marjorie Zobian, who lived in Fresno. They were also appellant's vice president and secretary. The directors were **Ms. Adoor**, Virginia Zarafonitis, and Jack Bastonchury, a resident of New Mexico. During the appeal year, the only two directors' meetings were held in San Francisco.

During 1968, appellant's commercial bank accounts were located in the San Francisco branch of the **Crocker** National Bank and the Albuquerque, New Mexico, branch of the Albuquerque National Bank. Its savings account was located at the Citizens Federal Savings and Loan Association in San Francisco. Appellant rented office space in Ms. **Adoor's** San Francisco home where its office equipment was located. Other rented personal property consisting of vehicles and heavy equipment used **in the mining** exploration was located in New Mexico. Appellant's three employees were all covered by appellant's employee benefit plan.

Most of appellant's business was conducted by its principal stockholder and president, Ms. **Adoor**, who was authorized to contract on appellant's behalf at her sole discretion. In California, Ms. **Adoor** presided over directors' meetings, and conducted the corporate banking, accounting, and other administrative activities. **Ms. Adoor** also conducted business outside **of** California on behalf of appellant. During 1968, she made at least eight

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trips outside of the state for the purpose of negotiating mining 'contracts and meeting with appellant's field manager, lawyer, and accountant. The duration of each trip was approximately two weeks. Most of the trips were to New Mexico. Ms. **Adoor** also attended meetings of the Atomic Industrial Forum which were held throughout the United States. She attended these meetings in order to discuss problems and developments in the uranium industry and also to contact prospective lessees of mining claims.

To perform the field work, appellant hired a field manager, an independent contractor, who was responsible for mineral exploration and the selection of sites for acquiring mineral rights. Exploration was conducted in New Mexico, Utah, Arizona and Nevada, al though during 196 8, most of the activities took place in New Mexico. When a favorable mineral discovery was suspected, appellant attempted to acquire the mineral rights for subsequent lease to another party.

Preliminary negotiations between appellant and prospective lessees were usually conducted by appellant's field representative in New Mexico. After a preliminary agreement was reached, the terms of the agreement were mailed to Ms. Adoor at appellant's headquarters in California. Final negotiations were conducted between the prospective lessee and Ms. **Adoor**, appellant's field manager and appellant's lawyer. When an agreement was reached, the terms were reduced to writing. The contract provided that the lessee would receive the mineral rights to the property, in return for which the lessee agreed to pay to appellant a guaranteed royalty plus a percentage of the gross income from the mining activities.

In its franchise tax return for the year in issue, appellant reported its income by utilizing the separate **accounting** method, reporting as California income only the interest received from its California savings account. Respondent determined that appellant was operating a single unitary business within and without California and apportioned appellant's business income by formula. In accordance with this determination respondent issued the assessment which gave rise to this appeal.

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When a taxpayer derives income from sources both **within** and without California it is required to measure its California franchise tax liability by the net income derived from or attributable to sources within this state. (Rev. & Tax. Code, § 2.5101.) If the taxpayer's business is unitary, the income attributable to California must be computed by formula apportionment rather than by the separate -accounting method. (Butler Bros. v. McColgan, 17 Cal. 2d 664 1.111 P.2d 3341, aff'd, 315 U.S. 501 [86 L. Ed. 991] (1941); Edison California Stores, Inc. v. McColgan, 30 Cal. 2d 472 [183 P.2d 16] (1947).) If the operation of that portion of the business done within California is dependent upon or contributes **to** the operation of the business outside of the state, the **business** is unitary. (Edison California Stores, Inc. v. McColgan, supra.)

In the instant matter., appellant is a single corporation with a single operating division which does business partly within and partly without the state. Appellant's principal office is located in California where the bulk of the executive and administrative tasks are performed, while field operations are conducted in **another** state or states. All of the activities both within and without the state contribute to the earning of appellant's **common** income, no portion of which can be specifically segregated and assigned to any particular activity. In view of the operational unity which is obviously present the activities within this state and outside of the state must be considered- as portions of a single unitary business. (See Keesling and Warren, The Unitary Concept in the Allocation of Income, 12 Hast. L. J. 42, 50 (1960); cf. Superior Oil Co. v. Franchise Tax Board, 60 Cal. 2d 406 [34 Cal. Rptr. 545, 386 P.2d 33] (1963); Honolulu Oil Corp. v. Franchise Tax Board, 60 Cal. 2d 417 [34 Cal. Rptr. 552, 386 P.2d 40] (1963).)

Apparently, it is appellant's position that even if its business is unitary its income should be determined by separate accounting. However, it is well established by statute, regulation, and case law that if a business is unitary its income subject to tax by California shall be determined by formula apportionment and not by the

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separate accounting method. (Rev. & Tax. Code, §§ 25101, 25128; Cal. Admin. Code, tit. 18, reg. 25101, subd. (f); Standard Register Co. v. Franchise Tax Board; 259 Cal. App. 2d 125, 137 [66 Cal. Rptr. 803] (1968).)

In support of its position that separate accounting should be used appellant relies on section 25137 of the Revenue and Taxation Code. Section 25137 authorizes exceptional allocation and apportionment methods only where the methods specified in the Uniform Division of Income For Tax Purposes Act (Rev. & Tax. Code, §§ 25120-25139) (UDITPA) do not fairly represent the extent of the taxpayer's in-state business activity. (Appeal of New York Football Giants, Inc., decided this day.) The special procedures authorized by section 25137, including separate accounting, may not be employed unless the party invoking that section first establishes that UDITPA's basic provisions "do not fairly represent the extent of the taxpayer's business activity in this state." (Appeal of Danny Thomas Productions, decided this day.) Appellant has not established that UDITPA's basic provisions fail to fairly represent the extent of its California business activity. Accordingly, we conclude that appellant's reliance on section 25137 is misplaced.

Appellant also contends that section 25124 of the Revenue and Taxation Code requires that rents and royalties from the New Mexico mining claims must be apportioned to New Mexico. Appellant's reliance on section 25124 is misplaced. That section applies only to nonbusiness income. Here, appellant was in the business of leasing mining claims. Therefore, the rents and royalties in question constituted its business income and must be apportioned by formula as prescribed by section 25128.

We conclude that respondent's action in this matter was correct and must be sustained.

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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 **Parador Mining Company, Inc.**, against a proposed assessment of additional franchise tax in the amount of **\$4,741.96** for the income year ended March 31, 1968, be and **the same**, is hereby **sustained**.

Bone at Sacramento, California, this **3rd** day of **February**, 1977, by the: State **Board** of Equalization.

Jeffrey B. Bennett Chairman
John K. Kuey, Member
Doris Samuels, Member
_____, Member
_____, Member

ATTEST: *W. W. Dunlop* Secretary