BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
REVERE COPPER AND BRASS INCORPORATED)

Appearances:

For Appellant: Paul E. Anderson
Attorney at Law

For Respondent: Joseph W. Kegler
Counsel

Roy E. Crawford and Hart H. Spiegel, Attorneys at Law, filed an amicus brief on behalf of Armco Steel Corporation, urging reversal.

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 Revere Copper and Brass, Incorporated, against proposed assessments of additional franchise tax in the amounts of **$6,968.54, $4,635.84, $9,189.24, $7,287.78,** and **$5,074.39** for the income years 1965, 1966, 1967, 1968 and 1969, respectively.

The primary issue for determination is whether Ormet Corporation is engaged in a single unitary business with appellant so that both should be included in a combined report.

Appellant Revere Copper and Brass, Inc. (hereinafter Revere), is a Maryland corporation. Its principal office is at Rome, New York. Revere is engaged in the business of fabricating nonferrous metals, primarily copper, brass, and aluminum. It describes itself as a fabricator-wholesaler, selling to customers for resale or further manufacture. Appellant has numerous plants at various locations in the United States, including City of Commerce, California. Both appellant and respondent readily agree that appellant's collective activities constitute a single unitary business and that pursuant to section 25101 of the Revenue and Taxation Code 1/ the three-factor apportionment formula of property, payroll, and sales is applicable to determine the California portion of appellant's unitary net income.

For the several copper and brass products it sells, appellant buys the prime metals from various commercial producers and then fabricates them into finished products. With reference to its fabricated aluminum products, appellant buys a substantial portion of its raw aluminum requirements from Olin Revere Metals Corporation (hereinafter Ormet).

Ormet's history can be traced back to the mid-1950's when Revere and Olin Mathieson Chemical Corporation (hereinafter Olin), 2/ competitors in the aluminum industry, were both planning to engage in primary aluminum production. During 1955, Olin embarked on a program to

1/ All section references are to the Revenue and Taxation Code unless otherwise designated.

2/ Neither Revere nor Olin, who is not a party to this appeal, owned any of the other's common stock.

finance, construct and operate an integrated complex of plants to produce primary aluminum. Since aluminum production is a capital intensive industry, and because of the economic advantages resulting from large scale operations, Revere and Olin determined that it would be more advantageous to construct a single plant rather than for each company to construct separate facilities. This determination led to an agreement, in August 1956, between Revere, Olin, and the newly incorporated **Ormet.** Principal provisions of that agreement, as amended, included the following:

'1. Basic capitalization was provided for by the issuance of $16 million in common stock and $15 million in 25-year debentures with Revere and Olin each acquiring **50** percent. **Ormet** was to obtain additional financing by borrowing $200 million from banks and insurance companies on terms satisfactory to Revere and Olin.

2. As long as Revere and Olin were its sole shareholders **Ormet** was to confine its business activity solely to the production of primary aluminum.

3. Regardless of the quantity and form of the primary aluminum produced, **Ormet** was required to deliver and Revere and Olin were required to accept, respectively, 34 and 66 percent of the production.

4. **Ormet's** total costs, incurred in producing prime aluminum were to be paid by Revere and Olin as their cost for the aluminum in the respective percentages of 34 and 66 percent, so that **Ormet** operated as a cost corporation, without net profit or loss.

5. Regardless of whether **Ormet** produced any prime aluminum, Revere and Olin remained obligated to pay **Ormet's** costs in the respective percentages Of 34 and 66 percent.

6. Revere and Olin each had an equal number of representatives on **Ormet's** board of directors.

7. The day-to-day operations of **Ormet** were the responsibility of its operating committee, composed of its president and two vice presidents, subject to the authority of the board of directors.

8. Revere and Olin had equal rights of access to the accounts and records of **Ormet** and to inspect its properties and operations at reasonable times.

9. Revere and Olin had the right of first refusal to acquire the other's common stock interest in Ormet in the event either desired to sell.

As originally planned, Ormet's investment requirements were approximately $250 million and its production capacity was 360 million pounds of aluminum per year. Ormet's production facilities, all of which were outside California, were located at Burnside, Louisiana, and at Hannibal, Ohio.

By 1964 it was apparent that additions and improvements to Ormet's existing facilities were required. In December 1964, Revere and Olin entered into an agreement forming Olin Revere Realty Company (hereinafter ORRC), a partnership located at Hannibal, Ohio. ORRC's purpose was to provide Ormet with all the land, buildings and equipment it needed. Principal provisions of the aqreement included the following:

1. The partnership business was confined to providing the necessary properties for lease to Ormet.

2. Original capital of $500 was contributed by Revere and Olin, with other contributions to be mutually agreed upon.

3. Net profits or losses were to be divided or borne by Revere and Olin in the respective percentages of 34 and 66 percent.

4. The partners were to have equal rights in the management of the partnership's business with each. designating two persons to serve on its management committee.

5. Neither Revere nor Olin could obligate the partnership property or pledge its credit in any way without the written consent of the other.

6. Revere and Olin had the right of first refusal if the other decided to transfer its partnership interest.

7. In the event of termination, any remaining surplus, after payment of debts and distribution of capital, was to be divided in the same proportion as the partnership profits.

The partnership operated at a loss throughout the years in issue. During 1965 through 1969, Revere's share of the partnership losses amounted to **$8,150, $20,393, $695,737 $716,260**, and $533,544, respectively.

In its California franchise tax returns for the years in issue appellant included the income from its own operations and its share of the partnership losses in computing unitary income and then determined the California portion of that income by the three-factor apportionment formula. For the years 1966 through 1969 it reported in the denominator of the property factor its 34 percent interest in the partnership's tangible property. For all the years in issue it reported **50** percent of the payroll and 50 percent of the tangible property of **Ormet** in the respective factor denominators.

As the result of an audit, respondent eliminated these several partnership and **Ormet** formula factor inclusions and eliminated the partnership losses from unitary income. Appellant protested respondent's action but its protest was denied. Thereafter, appellant petitioned respondent to exercise its discretion pursuant to section 25137 seeking the same relief that it sought at the protest level. Respondent treated the substance of the petition as part of the protest proceedings, denied the petition, and affirmed its previous adjustments. These adjustments, plus other adjustments not disputed by appellant and not at issue in this appeal, were included in the proposed assessments which are the subject of this appeal.

During the course of this appeal, respondent has conceded that, to the extent of appellant's **34** percent interest in the partnership, **ORRC's** losses and its property are **includible** in unitary income and the three-factor apportionment formula to determine the California portion of appellant's unitary income. In making this concession, respondent agrees with appellant's assertion that there is a clear business connection between **ORRC's** rental activities and appellant's unitary metals business. Furthermore, a partnership is not a separate tax-paying entity: thus, each partner who is involved in a unitary business must include in its combined report its distributive share of the income, or loss, from partnership activities as well as its appropriate share of the formula factors, where the facts establish the connection of such activities with the partner's unitary business. In making this concession, however, respondent emphasizes

the difference between the partnership, ORRC, and the corporation, Ormet, which under established standards is a separate taxable entity.

We now turn to our primary inquiry: Whether Ormet is engaged in a single unitary business with appellant.

Preliminarily, we note that respondent has followed a consistent practice for over 30 years. Where a parent corporation owns more than 50 percent of a subsidiary's common stock respondent combines 100 percent of the subsidiary's unitary net income with that of the parent, and uses 100 percent of the subsidiary's property, payroll, and sales in determining the apportionment formula. Conversely, where one corporation owns 50 percent or less of the stock of a second corporation, it has been respondent's consistent practice not to combine any income or apportionment factors. (See generally, Keesling, A Current Look at the Combined Report and Uniformity in Allocation Practice, 42 J. Tax. 106 (1975) where it is stated that common ownership of even as much as 50 percent of a corporation's voting stock is not sufficient for it to be included in a combined report; there must be common ownership, directly or indirectly, of more than 50 percent.)

The resolution of this question requires an application of either of two well established tests. Under one test, a business is unitary if there is unity of ownership, unity of operation, and unity of use. (Butler Bros. v. McColgan, 17 Cal. 2d 664 [111 P.2d 334] (1941), aff'd, 315 U.S. 501 [86 L. Ed. 991] (1942).) Under the second test, a unitary business exists when operation of the portion of the business done within the state is dependent upon or contributes to the operation of the business without the state. (Edison California Stores, Inc. v. McColgan, 30 Cal. 2d 472 [183 P. 2d 16] (1947).) Implicit in the second test is an ownership requirement.

We have determined that the ownership requirement was satisfied where stock ownership was less than 100 percent. (Appeal of Dohrmann Commercial Co., Cal. St. Bd. of Equal., Feb 29, 1956 (75%); Appeals of Eljer Co. and Eljer Co. of California, Cal. St. Bd. of Equal., Dec. 16, 1958 (over 50%); Appeal of Oakland Aircraft Engine Service, Inc., Cal. St. Bd. of Equal., Oct. 5,

1965 (76%); Appeal of The Weatherhead Company , Cal. St. Bd. of Equal., April 24, 1967 (60%); Appeal of AMP, Inc., Cal. St. Rd. of Equal., Jan. 6, 1969 (73%): Appeal of Signal Oil and Gas Co., Cal. St. Bd. of Equal., Sept. 14, 1970 (50% plus operating agreements); Appeal of Shaffer Rentals, Inc., Cal. St. Rd. of Equal., Sept. 14, 1970 (substantially all).)

It is respondent's position that appellant does not have controlling ownership of Ormet corporation. 3/ The ownership requirement contemplates an element of controlling ownership over all parts of the business: the

---

3/ Respondent does not rely on section 25105 which provides: *'Direct or indirect ownership or control of more than 50 percent of the voting stock of the taxpayer shall constitute ownership or control for the purposes of this article." Apparently respondent's nonreliance stems, at least in part, from section 25105's legislative history.

Section 25101 was adopted without change from former section 24301 by Stats. 1955, p. 1649, effective June 6, 1955. Section 24301 was adopted by Stats. 1949, p. 1000, effective July 1, 1951, from former section 10 of the Bank and Corporation Franchise Tax Act. Section 25105 was derived from former section 14 of the Bank and Corporation Franchise Tax Act. When codified by Stats. 1949, ch. 557, section 14 became sections 24303, 24303a, 24303b, and 24303c which, in 1955, became sections 25102, 25103, 25104, and 25105, respectively. When part of section 14 of the Bank and Corporation Franchise Tax Act, section 25105 provided: "Direct or indirect ownership or control of more than 50 percentum of the voting stock of the bank or corporation shall constitute ownership or control for the purposes of this section." Thus, it is apparently respondent's position that section 25105 is intended to affect only those sections formerly contained within section 14 (sections 25102 through 25105), and has no effect with respect to section 25101.

lack of controlling ownership standing alone requires separate treatment reqardless of how closely the business activities are otherwise integrated. (Keesling and Warren, The Unitary Concept in the Allocation of Income, 1.2 Hastings L.J. 42, 49 (1960).) A mutual dependence and contribution may exist between two enterprises, for example, where one enterprise supplies the raw materials for fabrication by a second enterprise. However, it would be improper to treat the two enterprises as unitary unless one owns and controls the other. In the absence of such controlling ownership, intercompany charges properly may be reflected by separate accounting. Generally speaking, controlling ownership can only be established by common ownership, directly or indirectly, of more than 50 percent of a corporation's voting stock.

The concept of controlling ownership was applied in the Appeal of Signal Oil and Gas Company, supra, one of the cases relied upon by appellant. As in the present appeal; the taxpayer in Signal Oil sought to include in its unitary business for formula apportionment under section 25101 a corporation (Interaero) in which its wholly owned subsidiary (GISA) owned 50 percent of the common stock. We determined that certain operating agreements entered into by the two 50 percent shareholders and the taxpayer's wholly owned subsidiary substantially changed the relationship between the two equal shareholders of Interaero in the conduct of its operations. On that basis we concluded that the operating agreements, when coupled with GISA's 50 percent stock ownership, gave GISA controlling ownership over Interaero; therefore, unity of ownership existed and Interaero should have been included in the unitary business. The decision in Signal Oil closely parallels the facts in the instant appeal. Here, as in Signal Oil, there are two unrelated, separate and competing entities each of which owned 50 percent of an operating corporation. This operating corporation produced aluminum for use in the separate manufacturing activities conducted by each 50 percent shareholder. The crucial difference is that Revere and Olin had exactly equal rights to control the operation and management of Ormet. Neither Revere nor Olin, in their own capacity, had controlling ownership of Ormet. Neither can point to any additional evidence of separate control which it alone possessed such as the operating agreements which were present in Signal Oil and which were the pivotal factor in deciding that appeal.

Appellant also relies on our decision in Appeal of Shaffer Rentals, Inc., supra. Initially we note that factually, Shaffer is markedly dissimilar from either Signal Oil or the present appeal. In Shaffer, part of the stock of two closely held family corporations was owned by various relatives while the remainder of the stock was held in trust for the benefit of the relatives. No single individual or trust owned a majority interest in either corporation. However, the combined legal and beneficial interests of three relatives represented substantially all the stock of both corporations. Thus, in view of the parallel stock ownership interests in both corporations, and the lack of any adverse or outside interest in either corporation, we concluded that the ownership requirement was satisfied and the two corporations should be combined pursuant to section 25101. In the present appeal there is no comparable parallel ownership of a majority interest between related parties. Instead, Revere owns exactly 50 percent of the stock of Ormet which entitles it to exactly equal control of Ormet, and no more. The other one-half of Ormet's stock and control is held by its business competitor, Olin.

In support of its position that controlling ownership can exist in the absence of majority stock ownership, appellant relies on sections 24725 and 25102 as well as Signal Oil and Shaffer, both of which we have distinguished. Appellant's argument may be explained as follows: The decisions in Signal Oil and Shaffer accepted the concept of control that has been developed under section 482 of the Internal Revenue Code of 1954 (the federal counterpart to sections 24725 and 25102)--it is the reality of control that is important, not the form or mode of its exercise. The test of control is not simply whether there exists more than 50 percent of the stock ownership of the controlled entity, nor is such a prerequisite to a determination of control. Furthermore, it is not essential that controlling ownership be held by one entity. Thus, Revere need not demonstrate that it has majority stock ownership in Ormet if it can establish control over Ormet, even though it shares that control with Olin. In support of this theory appellant cites several federal decisions dealing with section 482 of the Internal Revenue Code of 1954. (Grenada Industries, Inc. v. Commissioner, 17 T.C. 231 (1951), aff'd, 202 F.2d 873 (5th Cir.), cert. denied, 346 U.S. 819 [98 L. Ed. 345] (1953); Charles Town, Inc. v. Commissioner, 372 F.2d

415 (4th Cir.), cert. denied 389 U.S. 841 [19 L. Ed. 2d 104] (1967); B. Forman Co., Inc. v. Commissioner, 453 F.2d 1144 (2d Cir.), cert. denied 407 U.S. 934 [32 L. Ed. 2d 817] (1972).)

Appellant seeks support for its sections 24725, 25102 theory from Signal Oil and Shaffer. In Signal Oil we said:

> In order to obtain guidance for decision of the instant appeal it is necessary to examine provisions of statutes whose purpose and procedure are somewhat analogous to those of the unitary business concept of section 25101. Such similarity is present in sections 24725 and 25102 of the Revenue and Taxation Code which are concerned with clearly reflecting the income of affiliated taxable entities, and authorize the use of allocation of income to accomplish this purpose. The scope of both sections is defined in terms of taxable entities "...owned or controlled directly or indirectly by the same interests. ..."

Substantially the same language appears in Shaffer which was decided the same day. While we remain convinced that the results reached in both Signal Oil and Shaffer are sound, we find the route used to reach those results is suspect.

It is well settled that the statutory authority for formula apportionment of the net income of a unitary business where corporations are included in a combined report is section 25101, [4/] not section 25102. (See,

---

4/ During 1965 and 1966, the first two appeal years, section 25101 provided, in part:

> When the income of a taxpayer subject to the tax imposed under this part is derived from or attributable to sources both within and without the State, the tax shall be measured by

(continued on next page)

e.g., Edison California Stores, Inc. v. McColgan, supra; Appeal of Warner Bros. Pictures, Inc., Cal. St. Bd. of Equal., May 5, *1969; see* also Keesling and Warren, California's Uniform Division of Income For Tax Purposes Act, 15 U.C.L.A. L. Rev. 156, 174, 175 (1967).) With the exception of the Uniform Division of Income for Tax Purposes Act (UDITPA), no other section in the Bank and Corporation Tax Law deals with formula apportionment Of income.

On the other hand, sections 24725 and 25102 trace their origins to section 482 of the Internal Revenue Code of 1954, the Internal Revenue Code of 1939, and prior revenue acts. Significant common language is the authorization to the taxing agency to distribute, apportion, or allocate gross income or deductions between or among organizations, trades, or businesses in order to clearly reflect the income of such organizations, trades, or businesses. This language adopts the single entity theory and is specifically directed toward having each

---

4/ (continued)

> the net income derived from or attributable to sources within this State, Such income shall be determined by an allocation upon the basis of sales, purchases, expenses of manufacture, pay roll [sic], value and situs of tangible property or by reference to any of these or other factors or by such other method of allocation as is fairly calculated to determine the net income derived from or attributable to sources *within* this State.

The language of section 25101 is identical to its predecessor, section 10 of the Franchise Tax Act as revised in 1939. Section 25101 was revised in 1966, applicable for 1967 and subsequent years. It is substantially the same as the above quoted portion except that it refers to the apportionment formula factors provided pursuant to the Uniform Division of Income for Tax Purposes Act (UDITPA) contained in section 25120 et seq., in lieu of the specific formula factors listed above.

entity, individually, report only its own correct income and ded-uctions. (See Note, Multinational Corporation and Income Allocation Under Section 482 of the Internal Revenue Code, 89 Harv. L. Rev. 1202 (1976).) Its concern is the entity source of income or deductions, not where, geographically, such entity happens to be operating. In contrast, section 25101 deals with the method for determining the geographical source of the net income of a unitary business conducted within and without California. In determining the geographical source of such income section 25101 provides that an apportionment formula be used to determine the net income derived from or attributable to sources within and without this state. Additionally, under section 25101 it is immaterial which corporate entity included in the combined report happens to report an item of income or deduction. All income or deductions for specific corporations are collectively lumped together in the combined report to determine unitary net income for the unitary group prior to formula apportionment to determine the California portion of that income.

In view of the basic differences between section 25101 on the one hand, and sections 24725, 25102 and section 482 of the Internal Revenue Code of 1954 on the other, we reject, as without merit, appellant's argument that it need not demonstrate majority stock ownership if it can establish control over Ormet, even if that control is shared with another; and, we conclude that appellant who owns exactly 50 percent of Ormet's stock does not have controlling ownership of Ormet. In view of this determination, it follows that the federal cases cited by appellant interpreting section 482 of the Internal Revenue Code are not authoritative on the issue before us.

Next, we consider the argument of amicus that Ormet should be treated in the same manner as a "captive mining corporation." In support of its position amicus relies on Revenue Ruling 56-542, 1956-2 Cumulative Bulletin 327. (See also Rev. Rul. 68-28, 1968-1 Cum. Bull. 5. But see Rev. Rul. 77-1, 1977-1 Cum. Bull. _____, revoking Rev. Rul. 56-542 and Rev. Rul. 68-28, effective July 1, 1977.) In its simplest form, a captive mining corporation is a corporation created by two or more manufacturing concerns to produce and supply ore to the manufacturing concerns which., in turn, pay all the costs of the captive mining corporation. If the manufacturing concerns and the captive have complied with the specific requirements of Revenue Ruling 56-542, supra, the Internal

Revenue Service allows the corporate form of the captive mining corporation to be ignored. In effect, the captive is treated as if it were a partnership or joint venture between the manufacturing corporations which created it. Thus, the captive files only information returns for federal income tax purposes, while its creators report all the items of income and expense which have been passed through by the captive. We conclude that the argument of amicus must be rejected.

Initially, we note that **Ormet**, although a cost corporation, is not a captive mining corporation. The record does not indicate that the Internal Revenue Service treated **Ormet** as other than a separate operating corporation for federal income tax purposes. Even if **Ormet** were a mining corporation, we question whether it was organized in such a way as to comply with the specific requirements of Revenue Ruling 56-542. For example, the ruling speaks in terms of nominal capitalization for the captive, while in this case **Ormet** issued $16 million in common stock to Revere and Olin, hardly a nominal amount. Furthermore, we are unaware of any California case, regulation, or ruling which would allow such treatment, and neither amicus nor appellant has offered any. Finally, we note that the two revenue rulings relied upon by amicus have been revoked. (See Rev. Rul. 77-1, 1977-1 Cum. Bull. _____, effective July 1, 1977.) We recognize that the revocation is after the years in issue. Nevertheless, we believe that the fact that the rulings were revoked is not entirely without significance.

Portions of appellant's argument, as well as the position advanced by amicus, suggest that **Ormet's** separate corporate status be ignored and that it be treated as a joint venture. However, for the reasons set out below, we conclude that **Ormet** is a corporation in substance as well as in form, and that for California franchise tax purposes it must be treated as a corporation and not as a joint venture.

The rule to apply for determining whether a corporation is a separate entity for tax purposes was announced by the United States Supreme Court in **Moline** Properties, Inc. v. Commissioner, 319 U.S. 436, 438-439 [87 L. Ed. **1499**] (1943):

> The doctrine of corporate entity fills a useful purpose in business life. Whether the purpose be to gain an advantage under the law

> of the state of incorporation or to avoid or to comply with the demands of creditors or to serve the creator's personal or undisclosed convenience, so long as that purpose is the equivalent of business activity or is followed by the carrying on of business by the corporation, the corporation remains a separate taxable entity. (Footnotes omitted.)

(Accord, Taylor v. Commissioner, 445 F.2d 455 (1st Cir. 1971); Tomlinson v. Miles, 316 F.2d 710 (5th Cir. 1963); see also National Carbide Corp. v. Commissioner, 336 U.S. 422 [93 L. Ed. 779] (1949).)

Neither appellant nor amicus contend that, as a matter of form, Ormet is not a corporation. Furthermore, it is readily apparent from a review of Ormet's operations that the corporation was created for and did carry on business activity. Pursuant to the August 1956 agreement between Ormet, Revere, and Olin, it was Ormet who borrowed $200 million from various banks and insurance companies: it was Ormet who owned and operated the refining and reduction plants; it was Ormet who owned the land where the plants were located. Ormet negotiated its own labor contracts; hired and paid its own employees who were substantial in number: developed its own operating budgets; operated its separate computer system; and maintained a separate pension plan for its officers and employees. Ormet's day-to-day management and executive direction was supplied by its own executive committee. The members of this committee were officers of Ormet and were not officers of Revere or Olin. During 1969, the last appeal year, Ormet's current assets were $31 million while its net property was $77 million.

A primary characteristic that distinguishes a corporation from either a partnership or joint venture is that the yeneral partners or the joint venturers are personally liable for claims arising from the activities of the partnership or joint venture. Here, however, as expressed in the August 1956 agreement, both Revere and Olin insulated themselves from potential liability by establishing Ormet as a corporation.

Appellant has advanced several characteristics of the relationship between Revere, Olin, and Ormet which, it maintains, suggest that the Ormet operation is essentially a joint venture. However, upon examination, we

find that none of these traits are uncharacteristic of a closely held corporation which conducts business. with its shareholders.

In view of the substantial operating characteristics of Ormet it is impossible to ignore the corporate entity and characterize the separate operating corporation as a joint venture.

A common theme throughout appellant's argument is that since all profits from Ormet, a cost corporation, are recognized by Revere and Olin, a basic inequity is produced. According to appellant, the inequity is that, although Revere recognizes its share of the cost corporation's income, it is denied recognition in the apportionment formula of its share of the property and payroll which produces that income. In view of this alleged inequity, appellant argues that respondent should exercise the discretion granted it pursuant to section 25137 and include 50 percent of Ormet's property and payroll in the apportionment formula. Section 25137 permits deviation from the standard apportionment formula provisions of the Uniform Division of Income for Tax Purposes Act (UDITPA) if they "do not fairly represent the extent of the taxpayer's business activity in this state." The party seeking to invoke section 25137 bears the burden of showing that exceptional circumstances exist to justify deviation from UDITPA's regular apportionment provisions. (Appeal of Borden, Inc., Cal. St. Bd. of Equal., Feb. 3, 1977.)

Although not specified, it is apparently appellant's position that the "income" it recognizes is the difference between Ormet's cost of producing the aluminum and the fair market value of the aluminum produced by Ormet. It is not evident from the record that the ultimate price paid by Revere to Ormet for its production was other than the production's fair market value. In that case, Revere is in no different position than if it had purchased its raw materials from any supplier other than Ormet. Obviously, if Revere purchased its raw materials from any corporation other than Ormet it would not be claiming a share of that corporation's factors for inclusion in the apportionment formula. Accordingly, we conclude that appellant has failed to establish that the formula produces an inequitable result.

Respondent has requested that in the course of deciding this appeal we consider not only the facts of Ormet as they exist, a 50-50 ownership cost corporation operating entirely outside California, but also the hypothetical situation where a 50-50 ownership cost corporation operates entirely within California and where a 50-50 ownership profit corporation operates entirely within California. As we have held in this appeal, it would be inappropriate to apply the unitary business theory under such circumstances. However, with respect to the situation where a cost corporation operates entirely within California, section 24725 appears to adequately equip respondent to allocate income, deductions, credits, or allowances if it is necessary in order to clearly reflect income.' In the case of the profit corporation operating entirely within California, it is also conceivable that under certain circumstances it might be appropriate for respondent to make a section 24725 allocation in order to clearly reflect income. (See generally B. Forman Co., Inc. v. Commissioner, 453 F.2d 1144 (2d Cir.), cert. denied 407 U.S. 934 [32 L. Ed. 2d 817 (1972).) It is also possible that, under appropriate circumstances, section 25102 might authorize respondent to require a combined report. (Cf. Handlery v. Franchise Tax Board, 26 Cal. App. 3d 970, 978-979 [103 Cal. Rptr. 465] (1972).)

For the reasons set out above, we conclude that respondent's action in this matter must be sustained.

O R D E R

Pursuantto 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 Revere Copper and Brass, Incorporated, against proposed assessments of additional franchise tax in the amounts of **$6,968.54, $4,635.84, $9,189.24, $7,287.78,** and **$5,074.39** for the income years 1965, 1966, 1967, 1968 and 1969, respectively, be and the same is hereby **modified** in accordance with respondent's concession. In all other respects the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 26th day of July , 1977, by the State Board of Equalization.

_____, Chairman

_____, Member

_____, Member

_____, Member

_____, Member