



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of
UNION CARBIDE AND CARBON CORPORATION and
UNION CARBIDE AND CARBON CORPORATION
AS SUCCESSOR IN INTEREST TO:

BAKELITE CORPORATION
CARBIDE AND CARBON CHEMICALS CORPORATION
ELECTRO METALLURGICAL SALES CORPORATION
HAYNES STELLITE COMPANY
THE LINDE AIR PRODUCTS COMPANY
NATIONAL CARBON COMPANY, INC.
THE PREST-0-LITE COMPANY, INC.
OXWELD ACETYLENE COMPANY
THE OXWELD RAILROAD SERVICE COMPANY
UNITED STATES VANADIUM CORPORATION

Appearances:

For Appellant: Mr. Paul Smith, Mr. John Dalton
and Mr. Louis **Allocca**, all of
Appellant's Tax Department

For Respondent: Mr. John Warren, Associate Tax
Counsel

O P I N I O N

These appeals by Union Carbide and Carbon Corporation, for
itself and as successor in interest to the following **corpo-**
rations:

Bakelite Corporation
Carbide and Chemical Corporation
Electro Metallurgical Sales Corporation
Haynes Stellite Company
The Linde Air Products Company
National Carbon Company, Inc.
The Prest-0-Lite Company, Inc.
Oxweld Acetylene Company
The **Oxweld** Railroad Service Company
United States Vanadium Corporation

are from the action of the Franchise Tax Board in denying
protests against proposed assessments of additional franchise

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tax, which, as revised, total \$280,745.66 for the income years 1940 through 1949.

During the years in question Union Carbide and Carbon Corporation, hereinafter referred to as Appellant, owned all the stock of more than 25 subsidiaries, including those enumerated herein, Some of the subsidiaries had been organized by Appellant, others were pre-existing and operating corporations whose stock Appellant acquired. Collectively, Appellant and its subsidiaries constituted one of the largest corporate organizations in the United States and a major, supplier of many of the basic products derived from or related to modern processes in the fields of chemistry, physics and metallurgy.

Appellant's subsidiaries were arranged into groups, identified by the following basic products: (1) alloys, (2) gases, (3) carbons, (4) chemicals and (5) plastics. Within each product group was a management committee headed by a vice-president of Appellant. The vice-president heading the group committee was also a member of a top management committee composed of officers of Appellant and headed by its President.

Appellant and ten of its subsidiaries, including at least one company in each product group, were doing business in California and each filed separate franchise tax returns during the years with which these appeals are concerned. In early 1951, the year following the period in issue, Appellant merged all of its domestic subsidiaries into itself and has since conducted its business in the United States as a single corporate entity.

The Franchise Tax Board bases its proposed assessments of additional tax upon its determination that Appellant and all of its domestic subsidiaries were engaged in a unitary business. The first issue raised by Appellant is the propriety of this determination.

The subject of unitary enterprises and the allocation of unitary income by formula has been dealt with repeatedly and at length by the Supreme Court of this State. Butler Brothers v. McCollgan, 17 Cal. 2d 644, aff'd. 315 U.S. 501; Edison California Stores v. McCollgan, 30 Cal. 2d 472; John Deere Plow Co. v. Franchise Tax Board, 38 Cal. 2d 214, appeal dismissed, 343 U.S. 939. In the Butler Brothers case the court said a business is unitary if there is (1) unity of ownership, (2) unity of operation and (3) unity of use in the centralized executive force and general system of operation. In the Edison California Stores case the court affirmed the determination by the Franchise Tax Commissioner that a parent and 15 subsidiary corporations were engaged in a single unitary enterprise and said, at page 481, that "If the operation of the

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portion of the business done within the state is dependent upon or contributes to the operation of the business without the state, the operations are unitary; otherwise, if there is no such dependency, the business within the state may be considered to be separate." Under either test we are of the opinion that Appellant and its United States subsidiaries were engaged in a unitary operation.

Appellant was organized in 1917 as a means of bringing together under one management Union Carbide Company (calcium carbide), Linde Air Products Company (oxygen), Prest-O-Lite Company (acetylene gas) and National Carbon Company (electrodes) and several other corporations producing related products. Calcium carbide is produced in electric furnaces which require and consume carbon electrodes. Acetylene gas in turn is produced from calcium carbide. Acetylene gas and oxygen are combined and utilized in the oxyacetylene process for cutting, welding and cleaning metals. The processes and products of these subsidiaries were clearly so interdependent that any change in the operation of one would have had an immediate effect on the operations of the others,

Although the number of subsidiaries has increased, together with the number and diversity of their products, the growth of both the corporate organization and the product structure has been based upon a logical progression. Knowledge of the technology of the electric furnace and the oxyacetylene process led the group into the ferro-alloys field (Electro Metallurgical Co., Haynes Stellite Co.), Experiments in getting acetylene out of petroleum by use of an electric arc (Prest-O-Lite) produced by-products which were the foundation of the group's chemical business (Carbide and Carbon Chemicals Corp.) The chemicals group became a major supplier of raw materials to the budding plastics industry and the corporate organization soon entered that business.

The interdependency between the products and operations of each subsidiary and between the subsidiaries and Appellant during the early history of the organization continued through the period in question and until the merger in 1951. Thus, Prestone, an anti-freeze produced by the chemicals group, was marketed during the years in question by National Carbon of the carbons group. Activated carbon produced by National Carbon was marketed by Carbide and Carbon Chemicals Company. Calcium carbide was produced in the same electric furnace plants that produced ferro-alloys for the alloys division. A wood alcohol plant (chemicals group) located at Niagara used carbon monoxide gas piped from carbide furnaces at Niagara Falls. Similarly, Michigan Northern Power Company (gas group) furnished power for electric furnaces operated by the alloys group.

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No less than eleven managerial departments were maintained by Appellant to provide services for all the subsidiaries. They were: Accounting, Credit, Foreign, Industrial Relations, Insurance, Law, Property, Publicity, Purchasing, Taxes and Traffic. Through the device of management committees, control and management were centralized in Appellant.

Finally, the research and know-how of each subsidiary and of each group has benefited the entire combine. The effectiveness of the constant and free exchange of research and technical skills is best illustrated by some of Appellant's own statements. In its 1940 Annual Report the following statement appeared:

"Chemical and plastics groups resulted from basic organic research within the gas group. Earnings of the plastic group were at a higher rate as a result of economies effected through savings in raw materials and through co-ordination of technical research, production and marketing methods,"

And in its publication entitled "Products and Processes" it stated:

"You will notice, as you read this story of UCC, how the work of one group is benefited by the research, engineering, and production facilities of the other, This has been the key to the Corporation's remarkable progress since its organization in 1917."

While we do not have before us evidence relating to all of the products, processes and operations of Appellant and its subsidiaries, it is abundantly clear that there are present the three unities of ownership, operation and use, held in Butler Brothers v. McColgan, supra, to establish the unitary nature of the business. Similarly, where "the work of one group is benefited by the research, and production facilities of the other" and where "economies [are] effected through ... co-ordination of technical, research, production and marketing methods" it is equally apparent that each segment of the enterprise contributes to and is dependent upon the operations of the whole. Within the test laid down in Edison California Stores v. McColgan, supra, neither Appellant nor any of its major subsidiaries was doing a separate and unrelated business,

For the reasons stated, we have concluded that there is no merit in Appellant's contention that it and its subsidiaries are not engaged in a unitary business. There is also an absence of merit in Appellant's contention that the action of the Franchise Tax Board results in the taxation of extra-

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territorial income contrary to the 14th Amendment of the United States Constitution. Once it has been determined that a business is unitary the taxpayer can prevail on the constitutional argument only by showing that the allocation formula is intrinsically arbitrary or that it has produced an unreasonable result, Butler Brothers v. McColgan, supra, Edison California Stores v. McColgan, supra, and John Deere Plow Co. v. Franchise Tax Board; supra, Appellant has not even attempted to make such a showing. It has merely alleged that this will be the result if the action of the Franchise Tax Board is sustained,

In addition, to determining that Appellant and its subsidiaries were engaged in a unitary business, the Franchise Tax Board also determined that certain income, referred to as government project fees, was income of the unitary business and includible in the combined net income to be allocated by formula. These government project fees were paid to Appellant and its subsidiaries by the United States Government for the services of managerial and technical personnel used in connection with the construction and operation of certain government-owned plants, including one of the atomic energy plants at Oak Ridge, Tennessee. None of these services was rendered in California and Appellant contends that the fees are clearly separable from its other income and are allocable to the states in which the services giving rise to the fees were rendered,

We do not regard the activities giving rise to these fees as separable from the unitary business. The fees received by Appellant represent a realization upon an intangible asset which arose in the course of its regular business operations. The technical and managerial skills of the personnel used on these government projects were acquired during the regular business operations of Appellant. Its skilled technical and managerial force is probably the most valuable asset of the unitary business. The income realized upon this asset is income of the unitary business and as such is subject to allocation among the various states in which Appellant is doing business.

Three other issues were presented by these appeals. All can be dealt with rather summarily. One concerns mathematical errors made by the Franchise Tax Board in its computations. Since the filing of these appeals Appellant has furnished additional information and the Franchise Tax Board has corrected the errors and issued amended assessments.

Another question concerns the assessment of an additional tax against United States Vanadium Corporation for the taxable year 1940. The Franchise Tax Board contends that this sub-

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sidiary was not engaged in business in California for twelve months in 1939 and under Section 13(c) of the Bank and Corporation Tax Act was subject to an additional second year tax. To support this contention it relies upon the general presumption that the findings of the administrator in proposing an assessment of additional tax are prima facie correct. Appellant, however, has now furnished satisfactory evidence establishing that the subsidiary was engaged in business in California during the entire year 1939. This proposed additional assessment, accordingly, must fall,

The final issue concerns certain procedural errors made by the Franchise Tax Board in connection with one of the notices of proposed additional assessments. Two questions are presented: (1) was the notice protested and (2) if so, was the protest terminated by the issuance of a Final Notice of Additional Franchise Tax dated August 3, 1948. The answer to the first is, clearly, yes. The Franchise Tax Board properly treated as a protest Appellant's letter of April 30, 1948, relating to the notice in which it stated, "We presume, under the circumstances, that this letter will act as a stay." The answer to the second question is, just as clearly, no. Under Section 25660 of the Revenue and Taxation Code, a protested proposed assessment can become final only after notice of action on the protest is mailed to the Appellant. The form entitled Final Notice of Additional Franchise Tax erroneously issued by the Franchise Tax Board did not purport to constitute a notice of action on the protest and did not, in our opinion, warrant the Appellant in concluding that the Franchise Tax Board had acted upon the protest. The action of that board in subsequently denying the protest is therefore, before us and must be sustained for the reasons hereinbefore stated.

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 Union Carbide and Carbon Corporation, for itself and as successor in interest to its subsidiaries, to proposed assessments of additional franchise tax, which, as revised, total \$280,745.66

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for the income years 1940 through 1949, be and the same is hereby modified as follows: the action of the Franchise Tax Board in denying the protest of Union Carbide and Carbon Corporation to the proposed assessment of additional tax under Section 13(c) of the Bank and Corporation Tax Act against United States Vanadium Corporation for the taxable year 1940 is reversed; in all other respects the action of the Franchise Tax Board is affirmed,

Done at Sacramento, California, this 19th day of August, 1957, by the State Board of Equalization.

Robert E. McDavid, Chairman

George R. Reilly, Member

J. H. Quinn, Member

_____, Member

_____, Member

ATTEST: Dixwell L. Pierce, Secretary