

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Boise Cascade Corporation :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Stock Transfer :
Tax under Article 12 of the Tax Law for the Period :
August 31, 1969. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

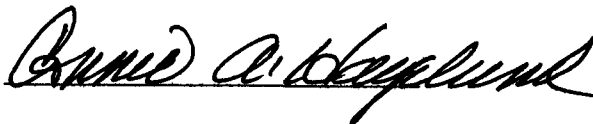
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 20th day of November, 1981, he served the within notice of Decision by certified mail upon Boise Cascade Corporation, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

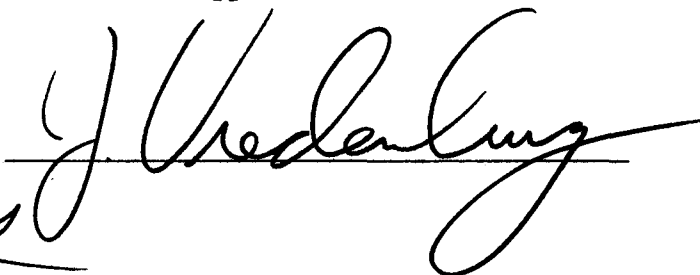
Boise Cascade Corporation
One Jefferson Square
Boise, Idaho 83728

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
20th day of November, 1981.





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STATE TAX COMMISSION

In the Matter of the Petition :
of
Boise Cascade Corporation :

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August 31, 1969.

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 20th day of November, 1981, he served the within notice of Decision by certified mail upon Michael W. Dill the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Michael W. Dill
c/o Reid & Priest
40 Wall St.
New York, NY 10005

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
20th day of November, 1981.

Annice P. Hagedorn

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

November 20, 1981

Boise Cascade Corporation
One Jefferson Square
Boise, Idaho 83728

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 279A of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 90 Days from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Michael W. Dill
c/o Reid & Priest
40 Wall St.
New York, NY 10005
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
BOISE CASCADE CORPORATION
for a Hearing to Review a Determination of Tax
Due or a Determination Denying a Refund of
Stock Transfer Tax under Article 12 of the Tax
Law for the Period August 31, 1969.

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DECISION

Petitioner, Boise Cascade Corporation, One Jefferson Square, Boise, Idaho 83728, filed a petition for a hearing to review a determination of tax due or a determination denying a refund of stock transfer tax under Article 12 of the Tax Law for the period August 31, 1969 (File No. 24358).

A formal hearing was held before Doris Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 19, 1981 at 2:45 P.M. Petitioner appeared by Reid & Priest, Esqs. (Michael W. Dill, Esq. and Richard C. Allison, Esq., of counsel). The Audit Division appeared by Ralph J. Vecchio, Esq. (Angelo A. Scopellito, Esq., of counsel).

ISSUES

I. Whether the collection of any stock transfer taxes relating to the merger of Ebasco Industries, Inc. into petitioner Boise Cascade Corporation is barred by the statute of limitations prescribed by section 281 of the Tax Law.

II. Whether the filing of the certificate of merger of Ebasco Industries, Inc. into Boise Cascade Corporation with the Secretary of State of the State of New York comprised a transfer of the portfolio stock held by Ebasco Industries, Inc., subject to the stock transfer tax.

III. If so, whether the stock transfer tax was applicable to the shares of common stock of the Compania Cubana de Electricidad held by Ebasco Industries, Inc.

FINDINGS OF FACT

1. As the result of a field examination of the books, records and memoranda of Ebasco Industries, Inc. ("Ebasco"), which merged into petitioner Boise Cascade Corporation ("Boise Cascade"), the Audit Division issued to Boise Cascade a Notice of Determination of Tax Due, under date December 2, 1970, asserting additional stock transfer taxes in the amount \$149,541.26. Said tax liability allegedly arose out of the transfer to Boise Cascade of portfolio stock and of stock in subsidiaries owned by Ebasco upon the merger.

2. On or about December 17, 1970, Boise Cascade petitioned for a hearing to review said determination.

3. No response was made to the petition until May 7, 1979, on which date the Tax Appeals Bureau of the State Tax Commission advised petitioner of the scheduling of a pre-hearing conference.

4. Boise Cascade was organized under the laws of Delaware on April 23, 1931 and at the time in question was a diversified company engaged in growing and harvesting timber, manufacturing and selling lumber, and selling building materials at wholesale and retail; and in manufacturing and selling paper and paper products, packaging and container products, office products, mobile homes, specialty vehicles and factory and on-site homes and other buildings, among others.

5. Ebasco (formerly, Electric Bond and Share Company) was organized under the laws of New York in 1905. At the time in question, it was an investment company, registered as such under the Investment Company Act of 1940.

6. The Agreement and Plan of Merger of Ebasco into Boise Cascade was executed on April 24, 1969 outside the State of New York. The stockholders of each company approved the merger at their respective meetings held on July 23, 1969. As called for by section 907 of the New York Business Corporation Law, a copy of an appropriate Certificate of Merger was filed with the Department of State of the State of New York at 8:40 A.M. on August 19, 1969. As provided by section 252 of the Delaware General Corporation Law, a copy of the Agreement and Plan of Merger was filed with the Secretary of State of the State of Delaware at 10:00 A.M. on August 19, 1969.

7. The Agreement and Plan of Merger provided in pertinent part:

"FIRST: On the effective date of the statutory merger, Ebasco shall be merged with and into Boise Cascade, and the separate existence of Ebasco shall cease; the Constituent Corporations shall become a single corporation named 'Boise Cascade Corporation', which shall be the Surviving Corporation.

* * *

"TENTH: The effective date of the statutory merger shall be the last day of the month in which this Agreement and Plan of Merger is filed in the office of the Secretary of State of Delaware. The date specified in the Certificate of Merger under Section 907 of the Business Corporation Law of the State of New York as the effective date of the merger shall also be the last day of such month."

The merger became effective, as provided, on August 31, 1969.

8. At the time of the merger, Ebasco's assets consisted of promissory notes issued by numerous Latin American governments or their instrumentalities; marketable securities; cash and short-term investments; controlling ownership of companies engaged in engineering, chemical processing, construction, architectural and consulting activities and of certain electric utility companies in Latin American countries; and various investments in corporations engaged in manufacturing and other operations in Latin America.

9. Upon the merger becoming effective, the New York stock transfer tax was paid in respect of certain securities held by Ebasco in its marketable securities portfolio and securities of certain subsidiaries of Ebasco, namely, those as to which stock registry books or stock transfer books, or both, had been maintained in New York.

10. No tax was paid in respect of shares of stock of certain Ebasco subsidiaries: each of said subsidiaries was incorporated in a jurisdiction other than New York, had its stock registrar and stock transfer agent located outside New York, the stock certificates were held outside of New York, and possession of such stock certificates was transferred outside of New York. It was, and is, petitioner's position that not a single incident of the passing of title from Ebasco to Boise Cascade occurred in New York.

11. No tax was paid in respect of certain shares of stock included in the marketable securities portfolio of Ebasco at the date of merger. As to each of these corporations, the stock registrar was located outside of New York, the transfer agent was located outside of New York, the stock certificates were located outside of New York, and possession of such stock certificates was transferred outside of New York. All but three of the thirty-two corporations were incorporated outside the State of New York.

12. No tax was paid in respect of 3,159,126 shares of common stock of Compania Cubana de Electricidad ("Cuban Electric") owned by Ebasco on the merger date. The stock has never been transferable or registerable within New York. All the Cuban properties of this large public utility company which operated entirely in Cuba were seized by the Castro government in August, 1960, without any compensation or offer of compensation, and there has been no offer of compensation since. As of August 31, 1969 Cuban Electric had outstanding

debt of \$306,935,681.94 including interest accrued to such date of \$87,307,445.09. Its indebtedness has been in default since August, 1960. Cuban Electric has no assets other than miscellaneous assets located outside of Cuba having a value on August 31, 1969 of \$3,829,008.21 (plus miscellaneous supplies held since 1960 of relatively small but undetermined value) together with its claim against the Cuban government for the property seizure. Prior to December 31, 1967, Ebasco's entire investment in Cuban Electric was written off against an investment reserve previously established.

CONCLUSIONS OF LAW

A. That section 281 of Article 12 of the Tax Law prescribes the following statute of limitations for the collection of taxes imposed under such article:

"The provisions of the civil practice law and rules relative to the limitation of time of enforcing a civil remedy shall not apply to any proceeding or action taken to levy, determine or enforce the collection of any tax or penalty prescribed by this article, provided, however, that no such proceeding or action shall be commenced after the expiration of ten years after a tax became due or a penalty incurred..."

The above-quoted language does not require that all stages of the collection process be commenced prior to the elapse of ten years from the transaction giving rise to the tax, as petitioner urges.

Section 279-a states that where a person fails to pay any tax required by Article 12, the State Tax Commission "shall determine the amount of tax due at any time within five years after the tax became payable," unless extended by agreement of the Commission and taxpayer. The Notice of Determination of Tax Due was issued within the time limitation of such provision.

Section 279-b empowers the State Tax Commission to issue a warrant commanding the sheriff to levy upon and sell the real and personal property of any person failing to pay the taxes required by Article 12. The period of limitations of section 281 is applicable to this and any other action initiated

to enforce the collection of tax, and is suspended upon the filing of a petition for a hearing before the Commission. See section 681(c), applicable to Article 22; section 1081(c), applicable to Articles 9, 9-A, 9-B and 9-C.

B. That section 270 imposes a tax upon all

"transfers of shares or certificates of stock, or certificates of rights to stock...in any domestic or foreign association, company or corporation...made after the first day of June, nineteen hundred five, whether made upon or shown by the books of the association, company, [or] corporation...or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of sale or transfer, whether intermediate or final, and whether investing the holder with the beneficial interest in or legal title to said stock, or other certificates taxable hereunder..."

C. That on the effective date of a merger, all of the property of the merging corporation is transferred to and vests in the surviving corporation. New York Business Corporation Law sections 906(b), 907(i); Delaware General Corporation Law section 259(a).

Prior to the enactment of section 270-c of the Tax Law, it had been held that upon the consolidation of two New York corporations, the transfer of shares in other corporations owned by one of the constituent corporations of the consolidation was not subject to the New York stock transfer tax, for the reason that the transfer occurred solely by operation of law. Electric Bond and Share Co. v. State, 249 A.D. 371 (3d Dept.), affd. 274 N.Y. 625 (1937).

However, the enactment of section 270-c in 1943 (L. 1943, Ch. 443) made taxable all transfers effected by operation of law, except for those special exemptions specifically set forth in that statute.

D. That the effective date of the merger may be established at a date subsequent to the filing of the certificates of merger. New York Business Corporation Law section 906(a); Delaware General Corporation Law section 103(d).

E. That New York had jurisdiction over the merging New York corporation, Ebasco, until the jurisdiction was terminated by acceptance of the certificate of merger by the New York Secretary of State. By such filing of the certificate in this State, effective August 31, 1969, legal title to and beneficial interest in the shares of stock in other corporations were transferred from Ebasco and vested in Boise Cascade. Matter of Warner Communications, Inc., State Tax Commission, February 28, 1977. Cf. Crown Cork & Seal Co. v. State Tax Commission, 349 N.Y.S.2d 50 (Sup. Ct. Albany Co.), affd. 44 A.D.2d 880 (3d Dept. 1974).

Where, by the terms of the Agreement and Plan of Merger, the merger became effective August 31, 1969, it was irrelevant that the Delaware filing occurred one hour and twenty minutes subsequent to the New York filing.

F. That petitioner has not demonstrated entitlement to any exemption from the tax imposed under Article 12.

Subdivision (8) of section 270-c, which exempts transfers from a trustee to a surviving, substitute, succeeding or additional trustee of the same trust, is inapplicable to the transfer of stock of an insolvent corporation (Cuban Electric) upon the merger of Ebasco, the majority stockholder of said insolvent corporation, into petitioner Boise Cascade. See Opinion of Counsel, Dept. of Taxation and Finance, December 6, 1965, 1965 N.Y.T.B.-V.4, p. 29.

Nor are any of the other exemptions of section 270-c, e.g. subdivision (5) or (11), relevant or applicable to the instant case.

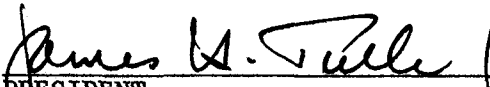
G. That stock transfer tax was payable upon the transfer of the portfolio stock held by Ebasco Industries, Inc. to petitioner Boise Cascade Corporation pursuant to the merger.

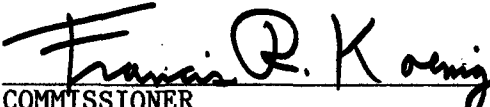
H. That the petition of Boise Cascade Corporation is hereby denied, and the notice of determination issued December 2, 1970 is sustained in full.

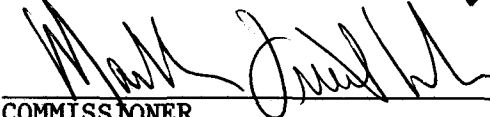
DATED: Albany, New York

NOV 20 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER