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Unknown.

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UTAH SUPREME COURT

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In the Supreme Court
of the State of Utah

COMBINED METALS REDUCTION COMPANY, a Corporation, *Plaintiff and Respondent,* vs. TOOELE COUNTY, a Body Corporate and Politic of the State of Utah, and PHARES HAYNES as Treasurer of Tooele County, Utah, *Defendants and Appellants*	No. 6907
and	
UNITED STATES SMELTING, REFINING AND MINING COMPANY, a Corporation, *Plaintiff and Respondent,* vs. PHARES HAYNES, as County Treasurer of Tooele County, a legal subdivision of the State of Utah, *Defendants and Appellants*	No. 6931

Supplemental Brief of Appellants

PRELIMINARY STATEMENT

In response to a request received from the Clerk of the above entitled Court, Appellants submit herewith a Supple-

mental Brief in connection with the cases set forth above, on the following question:

> "Does the inclusion of premium payments in the base for assessment and taxation of mines violate the constitutional requirements as to uniformity of assessment and taxation, as set forth in Sections 2, 3, and 4, of
>
> Article XIII of the Constitution of Utah?"

The question being the same for each case, and both cases having heretofore been combined for argument, this brief is submitted jointly, and in typewritten form. Printed briefs will be substituted as soon as they come from the press.

As we understand the question submitted, the Court desires to receive further assistance from counsel for the respective parties as to whether a construction of Sections 80-5-56 and 80-5-57, Utah Code Annotated, 1943, so as to include "premium payments" as a part of the gross proceeds realized by the respective mining companies, would violate the provisions of Sections 2, 3, and 4, Article XIII, of the Constitution of Utah. Sections 2 and 3 of Article XIII relate to the uniformity of assessment of all tangible property of the State, while Section 4 provides specifically how metalliferous mines or mining claims shall be assessed. The question of whether under the latter section the Legislature might provide for the assessment of metalliferous mines or mining claims on a basis which would result in a lack of uniformity need not here be considered, since, as we view the matter, the inclusion of "permium payments" as a part of the gross proceeds realized by the respective mining com-

panies from their ores produced in the calendar year in question not only results in uniformity as to determining "net proceeds", but that the failure to so include such payments would result in discrimination as to the several mining companies when "net proceeds" are determined.

Counsel for United States Smelting, Refining and Mining Company, in their Answering Brief in case No. 6931, heretofore filed posed a similar question to the one submitted by the Court and in that brief attempted to show that the inclusion of "premium payments" in the gross proceeds of the several mining companies would violate "the Constitutional and Statutory Requirements as to Uniformity of Assessment and Taxatinon." (Respondent's Brief, page 21 et seq.). We will, therefore, proceed to answer the argument therein set forth before setting forth our affirmative argument as indicated.

ARGUMENT

1. Respondent first states positively that "A mine would have a greater value in 1944 if it produced no ores in 1941 than it would have had had it produced ores in 1941." This may or may not be true. But it would not have a greater value in 1944 solely because it had no ore production in 1941. Counsel seem to think that quotas were fixed on the basis of 1941 production of ores, solely, but such an assumption is fallacious. Both of the mining companies here concerned had ore production in 1941, but were assigned zero quotas with respect to at least some of the metals involved. The stipulation of facts will reveal other companies similarly situated. In every instance, we are told, the quotas were determined on a basis best calculated

to increase production of ores and compensate the mining companies for such ore production, on a reasonable basis — to offset their increased costs of production, to permit them a reasonable profit on the extraction of sub-marginal ores, and otherwise compensate the mines for their greater ore production to assist the war effort. Regardless of the ore production of a mine in 1941, its quota was determined by the Committee after negotiating with the mine officials with the end in view to allow each mine a sufficient sum for its ore produced as to encourage greater and greater production, without, at the same time, allowing such mine to take advantage of a greater demand for such critical materials to the end that it would profit unjustly from the war effort.

2. While it is true that "two mines producing exactly the same quantity of copper, lead or zinc in 1944 would have different values, depending upon the quotas assigned to them," it is also true that such mines would have different values even though their quotas were exactly the same. Mine "A" in order to have the same value as Mine "B" would have to have not only the same production of ore and the same quota assigned by Metals Reserve Company, but would also have to have the same identical costs of production, the same smelting contract with the smelter; and if Mine "B" was a custom shipper, Mine "A" would likewise have to be a custom smelter. In other words, ALL of the factors involved in arriving at "net proceeds" would have to be identically the same with respect to Mines "A" and 'B'" in order for them to have the same value. This matter will be discussed more fully hereinafter.

3. Counsel next argue that "the more it costs to produce ore from a mine the more valuable the mine would be." But again they fail to take into consideration that under the provisions of Section 80-5-57, Utah Code Annotated, 1943, "net annual proceeds" are calculated by deducting from gross receipts the various costs of production set forth in that section. Among those deductions are: (1) "Amount of money actually expended during the year for labor, tools, appliances and supplies used in the mining operations, including the labor of the lessee and his employees;" (2) "The actual and necessary office and clerical expenses and the salaries of employees, other than corporate officers, within the state;" (3) "The actual cost of the installation, construction, maintenance and repair of machinery and improvements made during the year in and about the workings of the mine for use in extracting the ores;" (4) "The actual cost of reduction works, and improvements thereof, constructed during the year and operated in connection with the mine;" (5) "The actual cost of the transportation of the ore from the mine to the market or reduction works;" and many other items.

One of the primary purposes in granting and making premium payments to the mining companies (after ceiling prices on the various ores had been fixed) was to compensate the several companies for their increased costs of production, including increased labor costs, increased costs of materials, etc. Yet Respondents would take the position that they are entitled to deduct such costs of production, and all of such costs, without including as a part of gross receipts such premium

payments as were received, and without which payments there would have been no production of ore for the reason that the O. P. A. ceiling price would have been insufficient to take care of the production costs.

We call attention at this point to what has occurred since the ceiling prices have been removed on the ores produced by Respondents and others. The price of copper has increased above that received during the War both from the smelter and from Metals Reserve Company, it being now 19½ cents per pound. Likewise with Lead which is now quoted at 11.65 cents and zinc which is quoted at 10.5 cents per pound. We do not know whether the cost of production to the several mining companies has increased since ceilings have been removed, but certainly no contention will be made that the gross proceeds now being received from ore production is not the total amount received from all sources on account of such ores produced. Now, then can Respondents contend that when a lesser amount was actually received for the same production in the forepart of the year 1946, only part of such receipts are "gross proceeds." The foregoing facts are within the common knowledge of everyone and are called to the court's attention merely for the purpose of illustrating the inconsistency of the position taken by the mining companies in the several cases pending in the courts.

Having disposed of counsel's arguments contained in their brief heretofore filed in Case No. 6931, we proceed to a discussion of the Main Issues:

A Construction of the Statutes of Utah so as to Require the Inclusion of "Premium Payments" as a part of the "Gross Proceeds" realized from Ores produced would not violate the provisions of Sections 2, 3, and 4, Article XIII of the Constitution of the State of Utah.

At the outset, it must be remembered that while Sections 2 and 3 of Article XIII of the State Constitution require uniformity of assessment of all tangible property of the State, Section 4 applies specifically to the assessment of metalliferous mines and mining claims and authorizes their assessment "as the Legislature shall provide." Therefore, the fact that the Legislature has provided for the assessment of such mines and mining claims by an entirely different formula than that applied to other property, does not violate the provisions of Sections 2 and 3. Such was the holding of the Supreme Court of the United States in the case of South Utah Mines & Smelters vs. Beaver County, 262 U. S. 325, 67 L. ed. 1004:

> "The state constitution plainly contemplates that all property, irrespective of its character, shall be taxed 'according to its value in money.' The provisions with reference to the taxation of metalliferous mines does not mean to depart from this rule, but recognizes that their value cannot be determined in the ordinary way, since the ores which constitute the wealth of such property are hidden in the earth, and, as a general thing, disclosure of their extent and character must await extraction. The Constitution, therefore, provides, not for disregarding value in the assessment of taxes upon mines, but for arriving at it in a special manner — that is, *by a measurement proportioned to the net annual proceeds derived from the property. The value of property bears a relation to the income which it affords* . . . The constitutional

> provision, therefore, at best, will produce only approximate equality. Undoubtedly in fixing the multiple of the net annual proceeds upon which the value of metalliferous mines is to be calculated a good deal of latitude must be allowed the Legislature and the taxing authorities, but the power is not unbounded."

This same principal was enunciated by the Montana Supreme Court in the case of Byrne v. Fulton Oil Company, 85 Mont. 329, 278 P. 514, as follows:

> "The net proceeds tax is simply a tax in lieu of, or as a substitute for, the ad valorum tax on the value of mines or mining interests." (Citing Salt Lake County vs. Utah Copper Company, 294 Fed. 199.)

Not only have "proceeds" been the formula for determining mining value for taxation purposes in connection with metalliferous mines and mining claims, it has also been applied for determining values for public utilities such as railroads, motor carriers, and other activities. In each instance it is not whether the different companies or individuals within the class have the same income or "proceeds" but whether the rule applies uniformly to all such individuals or companies within such class.

At a glance, it is clear that our Statutes relating to assessment of metalliferous mines and mining claims, apply alike to Respondents and other mining cmpanies. The same formula is applied to each company in the same manner—that is, as stated by the Supreme Court in South Utah Mines & Smelters v. Beaver County, supra, "What are the net annual

proceeds derived from the property?" In each instance all income received from mining operations—that is, production of ores—is calculated to determine "gross proceeds" from which are deducted costs of production as defined in the statute to determine what the "net proceeds" of the mine are for taxation purposes. The fact that Mine "A" may receive more "gross proceeds" because of a more favorable quota assigned to it does not result in discrimination or lack of uniformity any more than the fact that Mine "A" may have received more for its ores prior to the War by reason of a fluctuating market. Again, we wish to call attention to the holding of this Court in the case of Mercur Gold Mining & Milling Company vs. Spry, 16 Utah 222, 52 Pac. 382, as follows:

> "By the term 'net annual proceeds of the mine' is meant what is annually realized from the product of the mine, over and above all the costs and expenses of obtaining such proceeds and converting the same into money."

This rule has repeatedly been affirmed, not only by this court, but by the Federal courts. See Salt Lake County vs. Utah Copper Company, 294 Fed. 199. In the case of Tintic Standard Mining Company v. Utah County, 80 Utah 491, 15 P. (2d) 633, this Court, in answering the contention that the rule for determining "net proceeds" had been so changed by subsequent legislations as to render the formula discriminatory and void, held:

> "There is no express limitation to prevent the Legislature from making the Constitution effective by providing the method by which the assessment may be made as

> applied to the basis specified in the Constitution. When the 1918 constitutional amendment was adopted, the words 'net annual proceeds' had attained a definite and well-understood meaning, as including 'what is annually realized from the product of the mine, over and above all costs and expenses of obtaining such proceeds and converting same into money.' This meaning had been impressed on the words by the legislative enactment of 1896, by judicial construction in 1898 in the case of Mercur Gold Mining & Milling Company v. Spry, supra, and by actual use and application by the taxing officials of the state during a period of twenty-two years . . . A careful comparison of the statute of 1919 with the statute in force at the time of the adoption of the 1918 amendment to the Constitution will show that, properly construed, its provisions are in harmony with the former statute and also in harmony with the definition of the term expressed in the decision of this court in Mercur Gold Mining and Milling Co. v. Spry, supra."

Basically, we still have the same formula for the assessment of mines as was applied in the Spry case. This rule applies uniformly to all mines and mining claims. But it does not necessarily follow that every mine will have the same valuation by the application of this formula. In order to have the same valuation as Mine "B," each factor going to make up Mine "A"s net proceeds will have to be identical with the factors going to make up Mine "B"s net proceeds. We readily concede that the fact that the single factor of "Quota" assigned to a particular mine may result in one mine receiving more "gross proceeds" for a ton of ore than is received by another mine which may have a higher quota. But this does not necessarily result in a higher valuation for the first mine or for the mine

with the greater total "gross proceeds." According to the theory on which quotas were established, a mine with a lower quota (and therefore receiving greater "gross proceeds") should have higher costs of production which would result in less "net proceeds" on which the assessment of the mining property is based.

On the other hand, a difference in Quota is not the only factor which may result in a difference in "gross proceeds" with respect to two mines similarly situated. It is a well recognized fact that the mining companies have different contracts with the smelters as to the percentage of recovery from the ores shipped by the different mines. Mine "A" and Mine "B" may be mining ore of the same quality and character, but Mine "A" may receive more for its ore shipped to the smelter because it has a more favorable contract than Mine "B." In other words, a carload of ore shipped from Mine "A" might bring a greater "price" from the smelter than the same carload of ore shipped from Mine "B," merely because of the difference in the contract which the two mines might have with the smelter. But this certainly does not render the formula for determining "gross proceeds" or "net proceeds" discriminatory, nor does it result in lack of uniformity of assessment. It does result, however, in assessing Mine "A" at a greater value than Mine "B," if the former has a greater *net* return from its mine production.

It might be well to pause here to discuss some of the cases in which a similar question has arisen as to uniformity of assessment. In the case of Salomen v. State Tax Commis-

sion of New York, 278 U. S. 484, 49 Sup. Ct. 192, the Supreme Court of the United States had before it the question of the validity of a New York tax against future interests in property. The contention was there made that such a tax was discriminatory as between individuals of the same class, and that a different method of assessment might have been made which would apply more uniformly. In rejecting both of these contentions the Court held:

> "The fact that a better taxing system might be conceived does not render the law invalid . . . To all such objections it may be answered that minor inequalities and hardships are incidents of every system of taxation and do not render the legislation obnoxious to the Federal Constitution. General American Tank Car Corp. v. Day, 270 U.S. 367, 46 Sup. Ct. 234, 70 L. Ed. 635."

Again, in the case of Alward v. Johnson, ... U.S. ...., 51 Sup Ct. 273, 75 A.L.R. 9, the constitutionality of a "gross receipts" tax levied by the State of California on all companies "owning, operating or managing automobile, truck," and other carrier lines. In the case in question the property replacement value of the taxpayer was considerably less than the receipts derived from its operation. This arose from the fact that protestant had a contract with the Federal Government for the carrying of mails. From receipts other than such contracts, there was insufficient to pay the operating costs of the carrier operations. The argument was made that plaintiff's ability to earn more with the contract than other persons could with the same property but without the contract, could not be considered in arriving at a value of his property, and that a

formula for arriving at "gross receipts" which took into consideration receipts from such contract rendered the assessment against the plaintiff "confiscatory, arbitrary, excessive," and "does not take into consideration the actual value of the property involved, and was without consideration of any element of value except the gross earnings." This contention was rejected by the Supreme Court, and the statute upheld. Too, the inclusion of the receipts derived from the Federal contract was sustained.

In Minnesota the assessment of railroads is based on their gross earnings. In the case of State v. Great Northern Ry. Co., 174 Minn. 3, 218 N. W. 167, the validity of the statute was attacked because it appeared that certain railroads received huge receipts from the transporation of iron ores from the mines to the lakes where such ores were shipped to the smelters. It was argued that by the application of the formula set forth in the statute, one railroad might be valued at a much higher figure than another although the cost of building and replacing the roadbed of each would be the same—that insofar as intrinsic value was concerned each might have the same value, but because one railroad obtained large revenues from its ore contracts it would be assessed at a much higher figure. In repudiating the argument of the railroad, the Supreme Court of Minnesota held:

> "The taxing authorities must take gross earnings as they find them. They do not fix earnings . . . Large earnings give value, and the road has a unitary value which cannot be disregarded because one mile costs for construction more than others . . . The property of the

> railroad is taxable at its value as a going concern. The ore traffic originates in Minnesota. The rate is not unduly competitive. The railroad which has the privilege of carrying the ore, whether through direct ownership or indirect ownership or control makes the earnings. No other could. Without such ownership or control or contracts ore-carrying roads would not have their present value nor make their present great earnings. We cannot see that the statutory scheme of taxation is unconstitutional or that the tax which it imposes works a hardship upon the defendant through an excessive valuation. Such earnings give the defendant's property great value which reflects itself in taxes."

Likewise, in the present cases, we might state that "net proceeds" or receipts of a mine give it a certain value which a mine receiving less "net proceeds" does not enjoy, even though such net earnings might be a result of a more favorable smelter contract, lesser costs of production, or a more favorable quota from the federal government on which premium payments are received.

Another Minnesota case, Fraser v. Vermillion Mining Company, 175 Minn. 305, 221 S.W. 167 (appeal dismissed, 56 Sup. Ct. 750), dealt with the proceeds derived from royalties received by mine owners. The statute imposed a mining royalty tax which was attacked on the grounds that it would result in inequality of taxation because one mine operator might receive greater royalites than another. In upholding the tax, the Court held:

> "Since the tax is measured by the amounts of the stipulated yearly consideration paid for the permission

to mine, it is true that equality may not always result. Some leases run as low as 12½ cents per ton mined, and others as high as $1.25 per ton. No doubt the uncertainty of the mining value of the ore and of the varying estimates of the mining cost at the time the lease is made determine the royalty or consideration. Other factors enter, such as the probable future market of the ore, as well as its market value at the time of the lease. But similar variations affect all sorts of property and the taxation thereof. We may take as an example the operation of the gross earning tax, the validity of which is so well-established that no authorities need be cited. It is a tax imposed on the property of the owner in the form of a lieu tax (citing cases). It is common knowledge that the tax paid by one of the railroads carrying the iron ore from the mines in this state when compared with the value of its property is many times greater than the tax paid by the ordinary railroad when compared to the value of the latter's property . . . .

Mining leases usually provide for a minimum royalty to be paid whether mining is done or not, and some contain provisions, not in others, that the minimum royalty thus paid shall be credited upon ore subsequently removed. The form of the permission under which iron ore is being removed should not have such bearing upon the validity of the law laying a tax upon the interest of the one who grants the permission. The law as construed in the Marble and the Lord Cases (172 Minn. 263, 215 N. W. 71, and 271 U. S. 577, 46 Sup Ct. 627, 70 L. Ed. 1093) affords, in our opinion, no valid ground for claiming it to be an arbitrary and discriminatory classification of property for taxation purposes."

Other factors, than those above discussed as being involved in the determination of "gross proceeds" may affect the determination of "net proceeds." One of such factors is

the cost of producing the ore (which must be deducted before arriving at the "net proceeds" of a mine). In the case of Anaconda Copper Mining Company v. Juned, 71 Mont. 132, 227 Pac. 1001, the Board of Equalization refused to allow a deduction for taxes and fire insurance premiums in arriving at "net proceeds" of a metalliferous mine for assessment purposes. (There the statute provided that only "actual costs" of production of the ore could be deducted.) The mining company took the same position that Respondents take in the instant cases, arguing that such a construction of the statute would render it unconstitutional for lack of uniformity of assessment. The Montana Supreme Court discusses the problem as follows:

> "Finally it is urged that, if defendant's contention is upheld and taxes and insurance are not deductible items, then the same is in conflict with section 1 of article 12 of the state Constitution, which provides, inter alia, that the Legislature shall levy a uniform rate of assessment and taxation and prescribe such regulations as shall secure a just valuation of all property. It is contended that a company owning a mine and not a reduction works may be compelled to pay, in the rate charged for reduction, a certain portion of overhead charges in excess of the actual cost of reduction, and that the net proceeds of mines in this instance would be different than if a company owned a mine and also a reduction works. This argument also would be true in the case of two separate companies owning mines and each owning a reduction works. The actual cost of reduction may in one instance be greater than the other, through management of the business and therefore the net proceeds of the mines in each case would be different. In either case,

> the cost of reduction would be the money actually expended for extracting the metals and minerals from the ores. So, in the case of a company owning a mine and not a reduction works, the custom rate paid by it for extracting metals and minerals from ores would be actual cost to it. It has no control over the price charged. It must be paid. It is an actual cost to it, even though it is not an actual cost to the owner of the reduction works . . . Therefore we are of the opinion that our construction does not conflict with this constitutional provision. This provision does not demand that absolute uniformity exist . . .
>
> We are therefore constrained to answer the question involved herein in the negative and thereby hold that taxes and insurance are not deductible items in determining the net proceeds of mines."

What the Montana Court stated in the quotation just completed should resolve any doubt this Court might have as to the constitutionality of such a construction of our statutes as would include "premium payments" in the "gross proceeds" received from the product of Respondents' mines. The formula set forth by the statutes is relatively simple and will result in most cases in an accurate valuation of mining property. However, it appears obvious that a company which is extravagant in its costs of production may have a lesser valuation for taxation purposes than another mine which has less "gross proceeds," but because of efficient mining operations is able to keep its costs of production down. Likewise, a mining company which owns its own smelter or reduction works, might, as was stated in the Anaconda Copper Mining Company case, supra, have less costs of reduction and extraction than a similar

mining company which might even ship its ores to the first mining company for reduction or smelting and pay a higher amount for such services. In each instance the "actual cost" of such operation to the mining company is deductible in arriving at "net proceeds."

Other factors than difference in quotas, which might result in a different assessment with respect to mines otherwise similarly situated are:

1. Difference in smelter contracts whereby one mining company receives more favorable returns on its ores shipped for reduction or extraction. This has been discussed hereinbefore.

2. Difference in market price at the present time or at any time when ceiling prices were not fixed by O. P. A. One mining company may hold its ores at the mine and refuse to ship until it receives a more favorable market price. This is particularly true in the case of Kennecott Copper Corporation as to copper mined at its Utah Copper mine. Because of its resources, Kennecott has been able to retain its ore for more favorable markets in times past, and has been able to cut down its other costs by large operations, efficient marketing methods, etc.

3. Difference in labor costs. It is a well known fact that prior to organizing of laborers working for the Kennecott Copper Corporation, lower wages were paid by that company than were paid to union employees by other companies en-

gaged in the same activities. Too, labor costs may be minimized by distance over which the ore must travel to reach the mine portal. Many other incidental factors here might cause a different assessment of mines having equal production of ores for which the same "gross proceeds" may be received.

4. Maintenance costs at the mine, including extending its workings, etc. The rule for deduction of such costs is set forth specifically in Seciton 80-5-57, defining "net annual proceeds." In construing such section this Court, in the case of Tintic Standard Mining Company v. Utah County, supra, refused to allow the mining company a deduction for the cost of acquiring certain tunnels and workings purchased from the Iron Blossom Mine, even though it appeared that such mine had not taken any deduction for such costs in the past. This Court, however, recognized that if the Tintic Standard Mining Company had developed the tunnels and workings in connection with its operations in mining ores, such costs would have been deductible under subdivisions 1 and 3 of Section 80-5-57, supra. But having purchased such workings as a part of a mine, they were a capital item and not a part of the expense of mining ore.

5. Cost of transportation of the ore from the mine to the market or reduction works. Again a mnie such as the Utah Copper mine of the Kennecott Copper Corporation, is at a distinct advantage because a wholly owned subsidiary transports the ore from the mine to the reduction works and smelter. It very well might be that such costs are considerably below those to other mining companies in the same vicinity that ship by other means to the smelter or reduction works.

6. Cost of reduction, sampling, assaying, and smelting and extracting the metals and minerals from the ores. This factor has been discussed hereinabove and the language of the Montana court in the Anaconda Copper Mining Company case, supra, reveals that while such a factor might well result in a different assessment for two mines otherwise similarly situated, such does not render the statute unconstitutional for lack of uniformity.

7. Expenses of operation which are not deductible in any event under the provisions of Section 80-5-58, Utah Code Annotated 1943. Such expenses include legal expense, salaries paid to corporate officers, as such, or the owner or owners of any unincorporated mining property. This matter was resolved in the case of Tintic Standard Mining Company v. Utah County, supra, where it was determined what constituted salaries to corporate officers. It may very well be that one company will pay much of its income from mining to its corporate officers in order to avoid the consequences of higher franchise or income taxes. But even though its books will show a small net income for such taxation purposes, its "net proceeds" are calculated without allowing such deductions.

It is thus very obvious that the factor with which this Court was concerned in requesting a further brief on the question of uniformity of taxation by the inclusion of "premium payments" in the "gross proceeds," is only one of many factors which may result in one mining company being required to pay greater taxes because it has a greater "net proceeds" valuation. In each instance, the formula is applied the same, but because

of difference in marketing costs, amounts received for the ores, or in the various operating costs, one mine may end up with a greater or lesser "net proceeds" dependent on the application of the foregoing factors. How can it be argued that one factor is more important than another, or that one factor may result in discriminatory assessment while another factor will not?

On the other hand, as was hereinbefore suggested, it might very well be argued that to fail to include "premium payments" in arriving at the "gross proceeds" of a mine would actually result in discrimination. A glance at the several charts contained in the Statement before the Tax Commission will reveal that very few of the mining companies of this state would show any "net proceeds" from the products of their mines without the inclusion of "premium payments." Would it be fair to a mining company that received little or no premium payments and yet, because of efficient methods of operation, together with low production costs, was able to show a profit from its operations to be required to pay a tax based on twice such net annual proceeds while another mining company was able to obtain a zero quota on its ore production and by a large scale operation and heavy costs of production receive considerable premium payments, resulting in a sizeable net income to its stockholders, but because it took a deduction of all such increased costs of production from the amounts received from the smelters, without including "premium payments" was able to show a loss or no net proceeds and thereby escape taxation. Certainly the latter mine should be required to count all of its receipts along with taking all of its deductions, in order to

make the application of the formula uniform to all mining companies.

Not only does the inclusion of such "premium payments" in the "gross proceeds" result in uniformity of assessment under our Statutes, but such payments were considered by the Federal Agencies as being a part of the "price structure" in connection with the sale and disposition of the ores mined. For this reason it was necessary for an amendment to the O. P. A. regulations to be adopted (Amendment No. 4, referred to heretofore in Appellants' briefs filed in both cases) authorizing mining companies to receive "premium payments" under the "Premium Payment Plan," without being in violation of the regulation governing ceiling prices on ores. To the same effect was the regulation permitting the inclusion of amounts received under "A" quotas as a part of the price received for such ores in determining the royalties to be paid under leasing contracts. And it must be remembered that in connection with the cases now before the court we are concerned only with "A" quotas and not with "B" and "C" quotas. However, a similar result would be obtained as to such quotas and the premiums paid pursuant thereto, since all of such payments were made for the purpose of compensating the mine for work done in connection with its mining operations, and were therefore offset by the deductions taken for such costs of operation.

CONCLUSION

From what has been said herein, we feel that the question submitted by the Court can be resolved only in favor of Appel-

lants to the effect that the inclusion of "premium payments" in the "gross proceeds" derived from the products of Respondents' mines will not violate the provisions of Sections 2, 3, and 4 of Article XIII of our State Constitution. On the other hand, such inclusion will result in greater uniformity of assessment and result in including all receipts, whereas Respondents would have only part of the amount received calculated as "gross receipts" or "gross proceeds."

In conclusion we wish to thank the Court for the opportunity afforded to furnish additional briefs on the question involved. We stand ready and willing to offer any such assistance as may be possible in aid of the Court in determining the problem before it.

Respectfully submitted,

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