



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
BERKELEY GUARANTEE BUILDING)
AND LOAN ASSOCIATION)

Appearances:

For Appellant: R. Ernest Brotherton, Attorney at Law,
Oakland
For Respondent: A. A. Manship, Franchise Tax Commissioner

O P I N I O N

This is an appeal pursuant to Section 25 of the California Bank and Corporation Franchise Tax Act (Chapter 13, Statutes of 1929) from the action of the Franchise Tax Commissioner in overruling the protest of Berkeley Guarantee Building and Loan Association against a proposed assessment of an additional tax in the amount of \$12.96 based upon its return for the year ended December 31, 1929. There are two points involved:

- (1) The refusal of the Commissioner to allow an alleged loss on the sale of property, and
- (2) His refusal to allow the offsetting of certain real estate taxes.

The Appellant was incorporated as a building and loan association under the laws of California on December 16, 1922, and has engaged in that business continuously since then. Among the losses claimed by it with reference to its operations for the year 1929 was the amount of \$200.17, representing the difference between what was realized by the association during that year for office furniture and equipment sold and the book value thereof at the close of 1928. The Comptroller-Treasurer of the Appellant corporation has made the statement under oath that this book value was equivalent to the *fair market value of the property as of January 1 1928, and the association is claiming the benefit of Section 14 of the Act as the basis for ascertaining its loss on the sale of property. The **Commissioner** denies that there has been proper proof of the fair market value on January 1, 1928, and denies that the loss is established.

While it is true that book value is not necessarily the equivalent of fair market value, it does not follow that they may not be the same or practically so. From data submitted by the Appellant it appears that the total cost of the articles sold was \$508.90 and that these costs had been distributed over the period from 1923 to 1926 as follows: 1923-\$180.75; 1924-\$60.70; 1925-\$44.85; 1926-\$222.60. By use of a schedule of depreciation, the accuracy of which is not questioned by the

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Commissioner, the net value of the entire property was shown upon the books of the association at \$304.67 at the close of 1928. The depreciation for that year had been calculated at \$50.88 so that the book value at the beginning of the year had been \$355.55. However, the Appellant does not claim this book value as the fair market value of the property on the basic date (January 1, 1928), but concedes that \$304.67 would be a proper figure to use as the fair market value at that time.

The Board must recognize that it is a matter of common knowledge that there is a very great shrinkage in the value of office furniture and fixtures once that type of property becomes "used". It is true that the sale price of \$104.50 at which the property in question was disposed of by the Appellant in 1929 is only a little over one-third of the value as of the close of the preceding year according to the books of the company and that this circumstance may indicate an inadequate depreciation. However, in view of the statement of the officer of the company under oath that the property was actually worth \$304.67 on January 1, 1928, and under the entire circumstances of the case we can not agree with the Commissioner that there has been such an absence of evidence of depreciation since the basic date as to warrant disallowance of the loss claimed on account of the sale of the property at \$104.50 in 1929.

The other point urged on appeal, viz., the refusal of the Commissioner to allow the offsetting of certain real estate taxes involves a claim for allowance of \$5.17 representing 10% of real estate taxes paid in California by the Appellant during the year 1929. It appears that the principal amount of these taxes, viz., \$51.70, was composed of an item of \$42.02 paid by the Appellant during 1929 to a title insurance company as escrow holder of certain real property in Oakland and an item of \$9.70 paid by the Appellant during the same year to the purchaser of certain real property in Berkeley. Each of these payments represented actual taxes on the respective properties. The Oakland property was owned by the Appellant while the Appellant was also the owner of the Berkeley property but sold it during the year 1929 and paid the taxes to the purchaser pursuant to an agreement with reference to the sale.

In view of what we have said in our opinion in the matter of the Appeal of La Ree Poudre Shoppes (filed January 20, 1931) concerning the application of Sections 4 and 26 of the Act relating to the offset for local property taxes, we conclude that it is not necessary that the payments be made directly to the tax collecting authorities in order to constitute items of offset provided that it satisfactorily appears that they represent tax payments made by the corporation. This association has shown that the property was actually owned by it and that the tax payments were made through the medium of another corporation or person merely as a matter of private agreement. We do not believe that the association should be deprived of the privilege of the offset because of these circumstances.

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O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that the action of the Franchise Tax Commissioner in overruling the protest of Berkeley Guarantee Building and Loan Association, a corporation, against a proposed assessment of an additional tax of \$12.96, based upon the return of said corporation for the year ended December 31, 1929, be and the same is hereby reversed. Said ruling is hereby set aside and said Commissioner is hereby directed to proceed in conformity with this order.

Done at Sacramento, California, this 15th day of May, 1931, by the State Board of Equalization.

Jno. C. Corbett, Chairman
H. G. Cattell, Member
R. E. Collins, Member
Fred E. Stewart, Member

ATTEST: Dixwell L. Pierce, Secretary