



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
DELTA WAREHOUSE COMPANY)

Appearances:

For Appellant: Phil O'Connell, Vice President of the
corporation; David B. Lyman, its Attorney,
Stockton
For Respondent: Frank L. Guereña, San Francisco

OP 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 Delta Warehouse Company against a proposed assessment of an additional tax of \$125.94 based upon the return of the corporation for the year ended May 31, 1928.

At the time of filing its return for this period, the taxpayer claimed a loss on sale of capital assets as a deduction from its gross income, basing the loss upon its appraised value as of January 1, 1928, of the property sold on April 25, 1928. The property had been acquired prior to January 1, 1928, so that the company was entitled to the determination of its loss pursuant to Section 19 of the Act which prescribes that "for the purpose of ascertaining the gain derived or loss sustained from the sale* * * of property acquired prior to January 1, 1928, and disposed of thereafter, the basis shall be the fair market value thereof as of said date." However, the Commissioner concluded that the January 1, 1928, valuation claimed by the taxpayer had not been satisfactorily established and denied the loss on the ground that the sale price on April 25, 1928, must be deemed to be a fair reflection of the market value at the beginning of the year.

When this appeal came before us for consideration the Commissioner opposed the offering before the Board of any evidence or testimony further than that presented to him on the question of the valuation of the property prior to his denial of the protest of the taxpayer to the proposed additional assessment. We had occasion to consider a similar contention made by the Commissioner in the matter of the Appeal of Boca Land Company and in our decision in that proceeding filed May 11, 1931, ruled adversely on the point. We pointed out that since it is our duty to determine what is the correct amount of the tax it would seem plain that we must consider the matter de novo. In this connection we cited the rulings of the Board of Tax Appeals in the Appeal of E. J. Berry, 1 B.T.A. 156, and in the Appeal of Gutterman Strauss Co., 1 B.T.A. 243. We are convinced that the same principles are applicable to the matter now before us.

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At the hearing of this appeal the taxpayer submitted an appraisal made of the property in question by a recognized appraisal company as of October 15, 1927. Data showing the depreciation of the property from that date to January 1, 1928, were also submitted. It appeared that the purpose for which the appraisals had been made were to determine the "sound" or actual market value of the properties and that the valuations had been placed with careful reference to the various factors affecting market or sale value. The depreciation of the appraised values to bring them down to the actual value as of January 1, 1928, appears to have been done in conformity with established valuation procedure.

We are convinced that the Appellant has submitted sufficient evidence to establish the value of the property in question as of January 1, 1928, to be the figure claimed in its return to the Commissioner and that consequently it was entitled to the deduction for which it asked on account of the amount by which that value exceeded the sale price of the property on April 25, 1928.

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 Delta Warehouse Company; a corporation, against the proposed assessment of an additional tax of \$125.94 based upon the return of the corporation for the year ended May 31, 1928, under Chapter 13, Statutes of 1929, be and the same is hereby reversed to the end that the tax liability of said corporation be determined as shown in said return as filed.

Done at Sacramento, California, this 1st day of December, 1931, by the State Board of Equalization.

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

ATTEST: Dixwell L. Pierce, Secretary