

BEFORE THE STATE BOARD OF EQUALIZATION



OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
INTERTYPE CORPORATION)

Appearances:

For Appellant: H. A. Grube, its Treasurer

For Respondent: Albert A. Manship, Franchise Tax Commissioner

O P I N I O N

This is an appeal pursuant to Section 25 of the Bank and Corporation Franchise Tax Act (Chap. 13, Stats. 1929, **as amended**); from the action of the Franchise Tax Commissioner in overruling the protest of Intertype Corporation against a proposed assessment of additional tax in the amount of \$238.73 with interest.

The sole problem involved in this appeal is the amount of the deduction which should be allowed Appellant on account of depreciation for the year 1929.

In its return for the year 1929 Appellant computed its depreciation allowance on the basis of what it apparently considered was the January 1, 1928 value of its property. The Commissioner refused to compute the depreciation allowance on the above basis for the reason that Appellant did not submit satisfactory evidence as to January 1, 1928 value. Instead, the Commissioner proceeded to compute the depreciation allowance on the basis of the cost of Appellant's property. As so computed, the depreciation allowance was \$82,789.79 less than the allowance as computed by the Appellant. This difference resulted in the proposed assessment of additional tax in the amount of \$238.73.

Prior to this appeal, the Appellant recomputed its depreciation allowance still using as a basis what it considered was the fair market value of its property on January 1, 1928. In the course of this recomputation, the Appellant discovered it had made an error in its original computation with the result that Appellant concedes the additional assessment of \$238.73 is correct except that it is \$6.14 too high. Hence, it is this latter sum of \$6.14 which is involved in this appeal.

Unquestionably, in the case of property acquired prior to January 1, 1928, the fair market value thereof on January 1, 1928 may be used as a basis for computing depreciation rather than the cost thereof provided such fair market value is satisfactorily established.

The Appellant attempts to establish the fair market value on January 1, 1928 by taking the replacement cost of the property in 1922, as shown by an appraisal of the Standard Appraisal Company in that year, in the amount of \$2,560,775.94. To this is

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added the sum of \$20,000.00 being Appellant's estimate of the value of property not covered by the 1922 appraisal, resulting in a total of \$2,580,775.94.

Inasmuch as only 85% of the property on hand in 1922 was estimated to be on hand on January 1, 1928, a deduction of 15% was made from the above amount, leaving a balance of \$2,193,659.14. To this was added the sum of \$634,507.07 being the cost of equipment acquired subsequent to 1922.

The total thus obtained was \$2,828,166.62 which Appellant claims was the fair market value of all of its property on January 1, 1928, on the basis of which its depreciation allowance for 1929 should be computed.

We do not believe that Appellant can be regarded as having established the fair market value of its property on January 1, 1928, by the above procedure. Fair market value is not, in our opinion, necessarily established by showing either cost or replacement cost. Cost of property although evidence of the value of property is certainly not to be regarded as conclusive evidence thereof. (See *Terre Haute & I. R. Co. vs. Smith*, 65 Ill. App. 101; *Kennebec Water District vs. City of Waterville*, 97 Me. 185.) Replacement cost of property, if due allowance is made for depreciation, may be of assistance in determining the value of the property. But unless allowance is made for depreciation, and there is no evidence that such an allowance was made in the instant case, cost of replacing property is not even admissible as evidence of the value of the property. (*Estate of Slade*, 122 Cal. 434, 439.1)

But even if it be conceded that the replacement cost of property in 1922 shows the fair market value thereof in 1922, and that the cost of property acquired subsequent to 1922 shows the fair market value thereof as of the time of acquisition, we still do not believe that Appellant has established the fair market value of its property on January 1, 1928.

We are of the opinion that the value of property at a particular time can be considered as being at least equal to the value of that property at a subsequent time, only if it is conclusively shown that the property did not decrease in value in the interim. This, the Appellant has not shown. The only "proof" submitted by Appellant in this respect is a letter from Mr. H. E. Hanes, General Manager of Standard Appraisal Company, the company making the appraisal of Appellant's property in 1922, in which it is stated:

"The comparison of replacement value between 1922 and 1928 we do not believe there would be very much change. The estimated appreciation in cost of materials, labor and equipment between this period would off-set any material depreciation."

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This statement is obviously very general and, although entitled to respect, is scarcely to be regarded as controlling. It is to be noted, too, that it takes cognizance of the possibility of some change in value. True, it is contemplated that there would not be "very much change". But it would not require a great change to result in a difference of \$6.14 in Appellant's tax. Further, the statement applies only to the property of Appellant on hand in 1922, and not to the property acquired by Appellant subsequent to 1922. With respect to this latter property, there has not been made the slightest effort to show that the value did not decrease subsequent to the time it was acquired and prior to January 1, 1928.

Further, it is to be noted that the appraisal in 1922 did not cover all of Appellant's property on hand at that time. Appellant arbitrarily assigned to the property not included in said appraisal a value of \$20,000.00 which it contends was the fair market value of said property on January 1, 1928. Clearly, the Appellant cannot be supported in this contention.

In view of the above, we must conclude that the Appellant has not satisfactorily established the fair market value of its property on January 1, 1928. Consequently, the action of the Commissioner in computing the depreciation allowance on Appellant's property on the basis of the cost of said property will not be disturbed.

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, Albert A. **Manship**, in overruling the protest of Intertype Corporation, a corporation, against a proposed assessment of an additional tax in the amount of \$238.73, based upon the return of said corporation for the year ended December 31, 1929, be and the same is hereby sustained

Done at Sacramento, California, this 11th day of May, 1932, by the State Board of **Equalization**.

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

ATTEST: Dixwell L. Pierce, Secretary