BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
PACIFIC COAST ENGINEERING COMPANY)

Appearances:

For Appellant: N. I. Norton, Secretary of corporation; H. T. Dotson, Accountant, associated with James D. Sully & Co.
For Respondent: Chas. J. McColgan, Franchise Tax Commissione

O P I N I O N

This is an appeal pursuant to Section 25 of the Dank and Corporation Franchise Tax Act (Chapter 13, Statutes of 1929, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of Pacific Coast Engineering Company, a corporation, against a proposed assessment of an additional tax in the amount of $49.91.

In its return for the year 1929, Appellant allowed as a deduction from its income the sum of $11,523.40 as depreciation on its machinery and equipment based on January 1, 1928, values thereof. Further, the Appellant did not include as income for said year the sum of $5,000 representing a fee received as the result of employment of one of Appellant's officers as consulting engineer for one year beginning April 1, 1927, and the sum of $964.79, representing miscellaneous freight and other claims of prior years reduced to collectibility during the year 1929.

In computing Appellant's tax liability on the basis of the above return, the Commissioner disallowed as a deduction the $11,523.40 depreciation item because no evidence was submitted as to January 1, 1928, values and included as income of Appellant for the year 1929 the $5,000 fee item and the miscellaneous item of $964.79 inasmuch as the same appeared on Appellant's books as income for the year 1929 and were reported by Appellant as income for said year to the federal government;

This action of the Commissioner resulted in a proposed assessment of additional tax in the amount of $160.75. After hearing duly held with the Appellant, this amount was reduced to $49.91 due to the Commissioner allowing as a deduction a portion of the $11,523.40 depreciation item.

The Appellant contends that the Commissioner erred in not allowing as a deduction on account of depreciation the entire sum of $11,523.40 and further erred in considering as income of Appellant for the year 1929 the $5,000 and the $964.79 items above noted.

In the case of property acquired *prior to* January 1,1928, the Act provides, in Section 8(f) that depreciation allowance may be computed either upon the basis of March 1, 1913, value of the property, on the cost of the property, or on the fair market value thereof as of January 1, 1928.

There is no question but that Appellant's property was acquired prior to January 1, 1928. Appellant claims that, inasmuch as its property was acquired at a bankrupt sale, its cost was considerably less than the fair market value thereof on January 1, 1928, Consequently, it would be of distinct advantage to Appellant to have its depreciation allowance computed on the basis of the January 1, 1928, value of its property rather than c the basis of cost. Obviously, however,- this can be permitted only if the value on January 1, 1928, is satisfactorily establish

The Appellant attempts to establish the value of its property on January 1, 1928, by showing the value of its property on December 4, 1929, as evidenced by an appraisal made for insurance purposes *on* that date by the California Appraisal Company.

It is to be noticed that this appraisal was made nearly two years after January 1, 1928. Conceding that the value of property as shown by an appraisal for insurance purposes reflects the fair market value of the property as of the date the appraisal was made, we do not believe that such a value conclusively establishes the fair market value at a time nearly two years prior to the date that appraisal was made.

It is quite possible that the value of Appellant's property increased in the interim between January 1, 1928,. and December 4, 1929. It is true that there is before us no evidence of such an increase. But we do not regard this as material. In order for the Appellant to establish that the value of its property on January 1, 1928, was at least as great as on December 4, 1929, it should have submitted evidence of such a character as to remov all uncertainty as to whether its property increased in value between January 1, 1928, and December 4, 1929, This the Appellan has not done. Consequently, we do not believe we would be justified in holding that the *Commissioner* erred in refusing to allow as a deduction for depreciation the entire amount of $11,523.40.

With respect to the $5,000 fee claimed by Appellant to have' been erroneously considered by the Commissioner as income of Appellant for the year 1929, the Appellant states in its appeal that:

> "H. G. Plummer, officer of the Pacific Coast Engineering Company was employed as consulting engineer by the Hawaiian Dredg-. ing Company for one year beginning April 1, 1927, on a retainer fee of $5,000.00. The Hawaiian Dredging Company paid this fee direct to Mr. H. G. Plummer during the calendar year 1928. However,, the determination of the status of this fee as company

income, and its reflection on the books of the Pacific Coast Engineering Company, did not take place until early in 1929."

Nevertheless the Appellant contends that since the item accrued partly in the year 1927 and partly in the year 1928 it should not be considered as income for 1929. Appellant's position with respect to this item is certainly remarkably inconsistent. The item was not entered on Appellant's books as income to Appellant until during the year 1929 whereas it would seem it would have been entered at a prior time if it had accrued at a prior time since the Appellant kept its books on an accrual basis.

Further, the Appellant apparently was of the opinion that the item could be considered as income for the year 1929, at least for federal income tax purposes, inasmuch as it states in its answer to the Commissioner's reply brief that "in order to eliminate the necessity of filing amended federal income tax returns for the years 1927 and 1928 the item was included in its 1929 federal tax return."

In view of this inconsistency, and in view of the provision in Section 12 of the Act to the effect that net income shall be computed in accordance with the method of accounting regularly employed in keeping the books of the taxpayer, we are unable to see how we would be justified in holding that the Commissioner erred in considering the $5,000 fee as income for the year 1929.

Apparently the Appellant treated the item of $964.79 representing "miscellaneous freight and other claims of prior years reduced to collectibility during the year 1929" in the same inconsistent manner as the $5,000 fee item. Furthermore, the Appellant has not given us any information with respect to the nature of the claims, when they were earned, or when they became due and payable. Consequently, we are unable to say that this item was not income of Appellant for the year 1929.

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 Pacific Coast Engineering Company, a corporation, against a proposed assessment of an additional tax in the amount of $49.91, based upon the return of said corporation for the year ended December 31, 1929, under Chapter 13, Statutes of 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